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No. 264

In the

Supreme Court of the United States

OCTOBER TERM 1963

JAMES P. DONOVAN, *et. al.*,
Petitioners,

v.

CITY OF DALLAS, *et al.*,
Respondents.

APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS, THE COURT OF CIVIL APPEALS, 5TH SUPREME JUDICIAL DISTRICT OF TEXAS AND THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

PETITION

JAMES P. DONOVAN,
30½ Highland Park Shopping Village, Dallas 5, Texas,
Attorney for Petitioners.

WARLICK PRESS, INC.—2203 VALDINA STREET—DALLAS—ME 1-3130

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JURISDICTIONAL STATEMENT

PETITIONERS

The parties to the proceedings hereinafter mentioned, in whose behalf this Petition for Writ of Certiorari is filed are: James P. Donovan, Austin Crow, Alberta R. Crow, William C. Isom, Juanita Isom, C. D. Crudgington, U. J. Boland, Dorothy Boland, H. P. McDonald, Russell G. Rogers, Caroline Rogers, Daniel C. Brown, Mary Brown, M. J. Pellillo, P. D. King, Nancy King, J. W. Slaughter, Jr., Christine C. Slaughter, J. H. Parr, Joan S. Parr, Walter Sodeman, George Atkinson, W. H. Richardson,

Mrs. L. A. Danek, L. A. Danek, Donald S. Reckrey, Mrs. Arlene E. Davis, R. L. Pitt, Pauline Pitt, Paul H. Crawford, Frank Grimes, Lena Mae Grimes, J. W. Tomlin, Charline Tomlin, Zelma Pellillo, Audrey M. Karr, Patricia Dukelow, Martin E. Collis, Jr., Norma June Collis, James E. Strum, Linnis Strum, James W. Odom, Helen Odom, Dr. Hobson Crook, Russell Moore Crook, Alberta M. Turrill.

OPINIONS BELOW

The opinion of the Supreme Court of Texas in *City of Dallas v. Dixon* is reported in *365 S. W. 2d at page 919*, and is set out in the Appendix hereto—Pages 1a-15a.

The opinion of the Court of Civil Appeals in the case of *City of Dallas v. Brown* is reported in *362 S. W. 2d at page 372*, and is set out in the Appendix hereto, Pages 16a-26a.

The opinion rendered by the Court of Civil Appeals in the Contempt Proceeding ancillary to *City of Dallas v. Brown* is unreported but is set out in the Appendix hereto at Pages 27a-38a.

Oral opinions rendered by the United States District Court in *Donovan et al., v. Supreme Court of Texas et al.*, are unreported but are set out in the Appendix hereto at Page 39a.

The Oral Opinion rendered by the United States District Court in *Brown v. City of Dallas* is unreported but is set out in the Appendix hereto at Page 40a.

JURISDICTION

The Judgments in the cases sought to be reviewed herein are as follows:

Supreme Court of Texas, entered March 13, 1963 (App. p. 41a), Motion for Rehearing Denied, April 10, 1963 (App. p. 43a).

Court of Civil Appeals Judgment of Contempt entered May 22, 1963 in *City of Dallas v. Brown* (App. p. 44a).

United States District Court Judgments dismissing *Brown v. City of Dallas* entered May 9, 1963 (App. p. 55a), and Appeal to Circuit Court of Appeals 5th Circuit entered June 10, 1963 (App. p. 56a).

United States District Court Judgment dismissing *Donovan et al. v. Supreme Court of Texas, et al.*, entered May 21, 1963 (App. p. 57a).

The Judgment of the Supreme Court of Texas, granted the Application of the City of Dallas et al., for a Writ of Mandamus addressed to the Court of Civil Appeals, 5th Supreme Judicial District of Texas, directing that Court to issue a Writ of Prohibition against Petitioners prohibiting them from prosecuting their suit entitled *Brown et al. v. City of Dallas et al.*, then pending in the United States District Court, Northern District of Texas; the Judgment of the Court of Civil Appeals concluded a contempt proceeding based upon alleged orders of that Court issued pursuant to the Supreme Court of Texas Judgment restraining Petitioners from prosecution of the aforementioned Federal suit and in addition punishing Petitioners

for having filed the action *Donovan et al. v. Supreme Court of Texas et al.* in Federal Court seeking an injunction against the State Courts' interference with prosecution of the *Brown* suit; the Court of Civil Appeals Judgment sentenced Petitioners' Attorney to jail for twenty days for contempt and imposed fines of $17,400 against Plaintiffs in the Federal case for refusing to obey the alleged Writ of Prohibition issued against Petitioners' prosecution of the *Brown* suit in the United States District Court. The United States District Court Judgment dismissing the *Brown* suit was predicated upon the alleged Writ of Prohibition issued by the Court of Civil Appeals, and the Judgment of the District Court dismissing the Petitioners' Appeal to the Court of Appeals 5th Circuit was granted upon Petitioners' Application made under duress (threats of further fines and imprisonment) exerted by the State Court of Civil Appeals, 5th District of Texas. The Judgment of the United States District Court dismissing *Donovan et al. v. the Supreme Court of Texas et al.* was predicated upon the conclusion that the case was moot (because of the dismissal of the *Brown* case) even though an appeal was then pending, and upon the further ground that the District Court would not act as a Court of Appeal from the Texas courts.

The Jurisdiction of this Court to review by Writ of Certiorari the aforementioned Judgments is conferred by *Title 28 U. S. C. Section 1257*, said Judgments being entered in violation of Article III and Amendments V, VIII, and XIV of the Constitution of the United States and the applicable Federal Statutes.

QUESTIONS PRESENTED

1. May the Supreme Court of Texas, acting *without* appellate jurisdiction, mandamus the reversal of the judgment of another State Court, directing the trial court to prohibit Petitioners from further prosecuting a pending Federal Court action, thereby usurping the Judicial Power vested in the United States Courts by the Constitution and Statutes of the United States?

2. May the Supreme Court of Texas usurp the judicial power of the United States District Court to determine a plea of res adjudicata pleaded in a pending Federal Court action?

3. May the Supreme Court of Texas exercise jurisdiction not granted by the Texas Constitution and Statutes to prevent further prosecution of a pending Federal Court action?

4. May the Texas Court of Civil Appeals, *without notice to parties to a final judgment*, reverse a judgment denying a Writ of Prohibition and issue such a Writ to prohibit Petitioners from prosecuting a pending suit in Federal Court?

5. May the Texas Court of Civil Appeals, *without issuance of legal process or service thereof according to law*, fine 85 citizens $17,400 for attempting to prosecute their rights under Federal Law in a pending Federal Court action; and were such fines excessive and unconstitutional?

6. May the Texas Court of Civil Appeals fine the Petitioners and sentence their lawyer to jail, for filing an

injunction action in Federal Court seeking restraint of State Courts' interference with their pending Federal action, when no prohibition existed against such injunction suit?

7. May the United States District Court abandon its jurisdiction by substituting for its judgment the judgment of a State Court to dismiss a pending Federal suit, and aid in the enforcement of a State order, illegally entered, by dismissing Petitioners' Appeal to the Court of Appeals, Fifth Circuit upon Petitioners' request filed under State Court threats of fine and imprisonment?

8. May Petitioners be convicted of contempt after a hearing in which no legal proof of the existence of a valid court order, under which Petitioners were cited to show cause as to why they should not be punished for contempt, was offered, and in which no proof of the legal service of such order was tendered?

Relevant Constitutional and Statutory Provisions

Constitution of the United States:

Article III. Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. * * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * *

Article IV. Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. * * *

Amendment V. No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *

Amendment VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV. Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. * * *

Title 42 U. S. C. Section 1971. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race color, or previous condition of servitude; any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

Title 42 U. S. C. Section 1981. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts,

to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to not other.

Title 42 U. S. C. Section 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 42 U. S. C. Section 1985 (2). If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, * * * or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; * * *

Title 15 U. S. C. Section 77q. Fraudulent interstate transactions (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. * * *

(c) The exemptions provided in section 77c of this Title shall not apply to the provisions of this section.

Title 15 U. S. C. Section 77v. (a) The district courts of the United States, and the United States Courts of any territory, shall have jurisdiction of offenses and violations under this subchapter * * * and concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. * * *

Title 28 U. S. C. Section 1331. The District Courts shall have original jurisdiction of all civil actions wherein the

matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

Title 28 U. S. C. Section 1343. The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * *

(3) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 28 U. S. C. Section 2283. A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Title 28 U. S. C. Section 1651. (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their repective jurisdictions and agreeable to the usages and principles of law. * * *

Texas Constitution Article 5, Section 3. The Supreme Court shall have appellate jurisdiction only except as herein

specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. * * *

Revised Civil Statutes of Texas, Article 1733. The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus *agreeable to the principles of law regulating such writs*, against any district judge, or Court of Civil Appeals or judges thereof, or any officer of the State Government, except the Governor. (Italics ours.)

STATEMENT OF THE CASE

Because of the involved nature of the proceedings which are here under review, Petitioners will state the cases heretofore decided in chronological order as they occurred:

THE ATKINSON CASE

On April 3, 1961 George Atkinson and 43 other Plaintiffs filed suit against the City of Dallas, Texas, seeking an injunction against the construction of a new parallel runway at Love Field, Texas: that suit went to Judgment on Plaintiffs' First Amended Original Petition which prayed for an injunction against the construction and use of said runway on the following grounds: threatened seizure of Plaintiffs' air rights without first making compensation therefor; irreparable damage to Plaintiffs through operation of jet aircraft over their property; the action of the

City was ultra vires and contrary to Federal Regulations and Standards of Safety; the use of the runway would constitute a nuisance; the construction was not in the public interest, not a public convenience or necessity and the City Council action was arbitrary and capricious; the *proposed* issue of bonds was unconstitutional, illegal and void. The Judgment was entered on a Motion for Summary Judgment, and an appeal taken to the Court of Civil Appeals, 5th Supreme Judicial District of Texas, which Court affirmed and wrote an opinion. An application to the Supreme Court of Texas for Writ of Error was made, and the Writ refused with the notation "N. R. E." That notation according to the Texas Rules of Civil Procedure (Rule 483) means: "In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation "Refused. No Reversible Error." The Supreme Court Judgment denying the Application for Writ of Error became final on March 14, 1962. Plaintiffs sought review by this Court on Certiorari, their Petition being denied on June 25, 1962. Petitioners' Motion for Rehearing was denied on October 8, 1962.

The *Atkinson* case was a class action with 42 Plaintiffs representing: "the home owners, families and individuals who live, work, reside and attend schools, churches and other community centers in the area embraced within the approach areas of planned runway 13R/31L:". It was not

a taxpayers' action; the only Defendant in the action was the City of Dallas; the validity of *outstanding revenue bonds* of the City of Dallas could not have been questioned in that action because of the *lack of necessary defendants, the holders of such outstanding bonds.*

This case was numbered 1028 on the Supreme Court Calendar for the October Term 1961 under the style *George S. Atkinson et al. v. City of Dallas.*

THE BROWN CASE

The official title of this case is *Daniel C. Brown et al. v. City of Dallas et al.*, Civil Cause No. 9276 in the United States District Court for the Northern District of Texas. This action was filed on September 24, 1962, one year and seventy days after the Judgment in the *Atkinson* case. The Plaintiffs in this Federal suit included 32 persons who had been Plaintiffs in the *Atkinson* suit, joined by an additional 90 persons who had *not* been in the *Atkinson* case. The Defendants in this Federal action included the City of Dallas, Dallas City Officials, a firm of Attorneys who had certified through interstate commerce as to the legality of outstanding airport revenue bonds of the City of Dallas and a group of individuals sued as holders of such outstanding bonds, and as representatives of the class consisting of the holders of all outstanding airport revenue bonds of the City of Dallas (*Brown* Case Record p. 2).

The Plaintiffs in this Federal case alleged a cause of action based on the Civil Rights Laws of the United States, the Securities Exchange Act, Postal Laws of the United

States and the 14th Amendment to the Constitution of the United States (*Brown* Case Record pp. 2-11).

Plaintiffs claimed a denial of due process of law and a deprivation of civil rights by reason of the defendant City of Dallas having sold 8 separate issues of Love Field Airport Revenue Bonds, totaling $16,400,000, without having such issues approved at a taxpayers' election as required by the Texas Municipal Airports Act; the individual Defendants were charged with conspiracy to violate the Federal laws mentioned above. In addition, as of September 24, 1962, Plaintiffs charged Defendants with conspiring together to deprive Plaintiffs, under color of law, of their Constitutional rights by constructing a parallel runway at Love Field in violation of United States Statutes, Regulations adopted thereunder and Texas Statutes (*Brown* Case Record pp. 8 & 10).

Plaintiffs' prayer for relief in this Federal case was for an injunction against Defendant City and City Officials making payments from Dallas City funds on the above mentioned outstanding Airport Revenue Bonds; an injunction against construction of any parallel instrument runway within the then existing limits of Love Field; an injunction against Defendants' further violation of United States Securities laws; and a declaratory judgment holding Airport Revenue Bonds Series 323, 352, 363, 364, 370, 371, 390 and 15 null and void and not an obligation of the City of Dallas.

It is to be noted that neither the Parties Plaintiff, Parties Defendant, nor the issues raised in the Brown case were the same as those in the Atkinson case (Brown case record pp. 1-11; Mandamus record pp. 11-28, 45-54, Item # 4).

On September 25, 1962 the Defendants in this Federal action appeared by H. P. Kucera and N. Alex Bickley and filed a "Motion to Advance" (*Brown* case record pp. 12-15); on October 3, 1962 Plaintiffs filed an Answer to said Motion to Advance (idem pp. 31, 32); on October 4, 1962 Defendants replied to Plaintiffs' Cross Motion to strike appearances (idem pp. 33-35).

Meanwhile on October 2, 1962, the Defendants in the *Brown* suit filed an Application for a Writ of Prohibition with the Court of Civil Appeals, 5th District praying for prohibition of Plaintiffs' further prosecution of their *Brown* suit (*Brown* case record pp. 54-73).

On October 8, 1962 Plaintiffs in the Federal case filed an Application with the United States District Court to stay proceedings in the State Court on the Application for Writ of Prohibition; Defendants' Attorneys answerd for themselves and the Court of Civil Appeals on October 10, 1962 (*Brown* case record pp. 46-53). The United States District Court denied the requested stay of State Court proceedings on the basis of comity (Idem pp. 154-156). On October 12, 1962 all Defendants joined issue by filing a Motion to Dismiss and an Original Answer, both including a plea of res adjudicata predicated on the *Atkinson* case (Idem pp. 118-125). No hearing was had on Defendants'

Motion to Dismiss until after Defendant, on April 24, 1963, filed a Supplemental Motion to Dismiss (Idem pp. 161-183) incorporating therein the Supreme Court of Texas Mandamus and the alleged Writ of Prohibition by the Court of Civil Appeals. On May 2, 1963 Plaintiffs made a Motion to drop certain party plaintiffs and to add new ones, and filed an answer to Defendants' Motion and supplemental Motion to Dismiss praying for the exclusion of extraneous matter from consideration in determining the Motion to Dismiss and in the alternative for a continuance to reply to said Motions as on Motion for Summary Judgment under Rule 12 Federal Rules of Civil Procedure (Idem pp. 184-187). The Motion for leave to add and drop Plaintiffs was granted; the other Motions were denied. After hearing on May 2, 1963 the United States District Court dismissed the case saying: "You and the litigants in this case have been prohibited from proceeding in this case and therefore I dismiss the case" (Idem pp. 210). An Order of Dismissal was entered May 9, 1963 (Idem p. 213). Petitioner Plaintiffs filed Notice of Appeal from said Order of Dismissal and posted the required bond on May 15, 1963 (Idem pp. 219-224).

On May 22, 1963, the Petitioner Plaintiffs were adjudged guilty of contempt of court as hereinafter set forth, fined $17,400 and their lawyer jailed for twenty days. While said lawyer was in jail, the Court of Civil Appeals threatened Petitioners with further fines and imprisonment if they did not dismiss the Appeal. Under this duress, the District Judge cooperating with the Court of Civil Appeals,

dismissed the Parties Plaintiff while their Counsel was in jail, and entered a final order dismissing the Appeal on June 14, 1963 (*Brown* case record pp. 225-272).

WRIT OF PROHIBITION CASE

The official title of this case was No. 16,193 in the Court of Civil Appeals, 5th Supreme Judicial District of Texas; the style, *City of Dallas et al., Petitioners v. Daniel C. Brown, et al., Respondents.*

This action was in the nature of an original proceeding before the Court of Civil Appeals whose determination thereof is by Texas law final and not subject to review by Appeal. The Petition for Writ of Prohibition named as Respondents the Plaintiffs in the *Brown* case in Federal Court and their Attorney; the Petitioners were identical with the Defendants in the *Brown* case. The Petition prayed for a Writ of Prohibition against the Respondents restraining them from further prosecution of the *Brown* case in the United States District Court. The only ground offered by Petitioners to justify the Writ and Orders ancillary thereto was that the *Atkinson* case was res adjudicata of all issues raised in the *Brown* case, and the filing of the *Brown* action constituted an interference with the Judgment in the *Atkinson* case (*Brown* case record pp. 54-73). The Court of Civil Appeals denied Petitioners' Application for Writ of Prohibition, holding in its written opinion that the filing of the *Brown* suit did not constitute an interference with its Judgment in the *Atkinson* suit, and declining to rule on the question of res adjudicata. The Court split

two to one, the majority stating "It is with regret that the majority of our court feel impelled under the circumstances to decline to order the writ of prohibition to issue" (Prohibition case record pp. 1-11). The Court of Civil Appeals denied Petitioners' Motion for Rehearing.

MANDAMUS CASE

The official style of this case filed in the Supreme Court of Texas as an Original Mandamus Proceeding is No. A-9340 *City of Dallas et al. v. Honorable Dick Dixon et al.* The Petitioners were the same as those who had applied for and been denied a Writ of Prohibition by the Court of Civil Appeals; they were also identical with the Plaintiffs in the *Brown* case. The Respondents in this Mandamus proceeding were identical with the Respondents in the Prohibition case and the *Brown* case except for the addition of three new Respondents, the Judges of the Court of Civil Appeals (Mandamus Case Record—Items 1, 2, 3, 4). The Petition for Mandamus alleged the history of the *Atkinson* and *Brown* cases and the Writ of Prohibition case, renewed the same argument and prayed for a Mandamus directing the Court of Civil Appeals to grant the relief prayed for in the Writ of Prohibition case (Mandamus Case Record—Item #3, pp. 1-9).

The Respondents, Petitioners herein, filed an answer to said Petition for Mandamus (Mandamus Case Record—Item #6, pp. I-IV) alleging in paragraph 15 (p. V) that the grant of the relief prayed for would be unconstitutional and void and in violation of the rights guaranteed Respondents by the Constitution and laws of the United States.

After hearing the Supreme Court of Texas wrote an opinion (App. p. 1a; Mandamus Case Record Item #9) and entered the Judgment sought to be reviewed (Idem #10). Motion for Rehearing was denied April 10, 1963 (Idem Item #14).

THE CONTEMPT CASE

Technically this case in an ancillary proceeding to Court of Civil Appeals cause heretofore reviewed under the heading "Writ of Prohibition Case": *City of Dallas et al. v. Daniel C. Brown et al.* No. 16,193.

Following the entry by the Supreme Court of Texas of its Order Granting the Application for Writ of Mandamus, and denying rehearing thereon, the Supreme Court sent a certified copy of its Order to the Court of Civil Appeals.

Upon Application of the City Attorney of the City of Dallas, the Chief Justice of the Court of Civil Appeals, *without notice to any party*, signed an Order described as a "Writ of Prohibition and Ancillary Orders" on April 16, 1963 (Contempt Case Record—Item #1). This Order was not sealed with the seal of the Court, nor did the Clerk's signature appear thereon as required by Rule 394 of the Texas Rules of Civil Procedure which reads as follows: "Any writ or process issuing from any Court of Civil Appeals shall bear the teste of the Chief Justice under the seal of said court and be signed by the clerk thereof, and unless otherwise expressly provided by law or these rules, shall be directed to the party or court to be served, and may be served by the sheriff or any constable of any county of the

State of Texas within which such person to be served may be found, and shall be returned to the court from which it issued. Whenever such writ or process shall not be executed, the clerk of such court shall isue another like process or writ upon the application of the party suing out the former writ or process." An examination of said "Item 1" reveals that the alleged writ was invalid and void for the following reasons:

1. it was not signed by the Chief Justice under the seal of the Court; no seal appears thereon;

2. it was not signed by the Clerk;

3. it was not directed to the party or the Court to be served;

While said alleged Writ recites that "a copy of this Order has been served in person" upon James P. Donovan, the testimony in the Contempt hearing (*City of Dallas v. Daniel C. Brown*, No. 16193, page 162, F. 18-21) demonstrates that no such order was personally handed to said Attorney.

Upon conclusion of the contempt hearing the Court requested the opposing litigants to submit proposed judgments (Idem p. 220). The record is void of any proof of service of the alleged Writ of Prohibition upon any of the parties charged with contempt. The rule quoted requires service of process by a constable or sheriff, and the only testimony offered on proof of service is alleged mailing by ordinary mail.

On May 22, 1963, the Court of Civil Appeals entered Judgment (Contempt Case Record—Item 2) finding 50 persons guilty of contempt in that they "(a) failed to request the United States District Court to dismiss Cause No. 9276, styled Daniel C. Brown, et al v. City of Dallas et al.,; (b) Contested the dismissal of the cause of Daniel C. Brown et al., v. City of Dallas et al., pending in the United States District Court; (c) Took exception preparatory to appeal of the order of the United States District Court dismissing Cause No. 9276 styled Daniel C. Brown et al., v. City of Dallas et al., ; and (d) Filed Cause No. CA-3-63-120 Civil, in the United States District Court styled James P. Donovan et al., v. The Supreme Court of Texas, et al.:" The Court found one person guilty of contempt on counts listed as (b), (c), and (d) above and an added count of having "joined as a party Plaintiff in Cause No. 9276 in the United States District Court styled Daniel C. Brown v. City of Dallas et al." The Court then found another six persons guilty of contempt for joinder in the *Brown* action and the earlier grounds (b) and (c). The Court then found 26 more persons in contempt for filing Cause No. CA-1-3-63-120 in the United States District Court styled *James P. Donovan et al. v. The Supreme Court of Texas et al.*, two of these persons never having been served with process. Finally the Court found 4 persons guilty of contempt for reasons (a) (b) and (c) charged against the first 50. It then absolved all persons who had appeared in person or by an Attorney other than James P. Donovan of all contempt even though their actions had been identical with those of others adjudged in contempt.

As to Petitioners' Attorney, the Judgment adjudged him to be in contempt of Court without specification of the contempt and sentenced him to 20 days in Dallas County Jail without bail; all others held in contempt were fined $200 each.

Although the Judgment was entered May 22, 1963, the Court's opinion was not written until June 7, 1963 (Contempt Case record—Item #3). No formal Order denying Petitioners' Motion for Judgment including findings of fact and conclusions of law appears to have been entered of record.

The Motion to punish for contempt filed by the City of Dallas appears of record (Contempt Case record Item #5) and the Petitioners' Motion to Quash and Answer raising the constitutionality of the contempt action appears as Item #7 of the Contempt Case Record.

Judgments amending the Original Contempt Judgment in the absence of Counsel who was in jail are included in the record (Idem—Item #8).

THE INJUNCTION CASE

Officially this case is styled *Donovan v. The Supreme Court of Texas*, No. CA-3-63-120 filed in the United States District Court, Northern District of Texas on April 23, 1963. The action was by certain of the Plaintiffs in the *Brown* case against the Supreme Court of Texas and the Court of Civil Appeals. The relief prayed for was an injunction against the State Courts' interference with Plain-

tiffs' prosecution of the *Brown* case in Federal Court. While the Federal Court dismissed the case as "moot" because of the prior dismisal of the *Brown* case, the record shows that the *Brown* case had been appealed and was not moot. (Testimony in Injunction case.)

CONCLUSION

The foregoing review of the various legal actions and proceedings establishes the following facts of record:

1. At the time the *Brown* case was filed in Federal Court, no litigation was pending in State Court, nor had any of the issues raised in the *Brown* case been litigated in any State Court proceeding.

2. The United States District Court, as of October 12, 1963 had jurisdiction over the subject matter and the persons of the Defendants in the *Brown* case.

3. The Court of Civil Appeals Judgment denying Respondents' Application for Writ of Prohibition was final and not subject to review by appeal (Mandamus Case Record—Item #9, Page 2).

4. The Supreme Court recognized that writs of prohibition issue to courts and not to litigants but disregarded the rule as "technical" (Idem).

5. The Supreme Court held that the *Atkinson* case Judgment was not a Judgment of the Supreme Court, and based its right to issue mandamus on Article 1733 Revised Civil Statutes of Texas, authorizing issue of "writs of mandamus *agreeable to the principles of law regulating such writs*" (Idem p. 3).

6. It held that when exercise of power is discretionary its exercise may not be compelled by a superior court (Idem p. 4).

7. The Supreme Court then reversed the finding of fact and law made by the Court of Civil Appeals in the Prohibition case and ordered that Court to set aside a Judgment made after trial, which Judgment involved the exercise of judicial discretion.

8. The Court of Civil Appeals reversed its Judgment without notice to the parties involved, and without notice entered a purported order carrying out the direction of the Supreme Court.

9. The Court of Civil Appeals wholly failed to issue or cause to be served legally any legal process to prohibit Petitioners from doing anything.

10. The United States District Court failed to protect its jurisdiction over the *Brown* case, and substituted State Court Judgments for the Judgment which it was required to render under the Constitution and Laws of the United States; it further wholly failed to apply the Rules of Federal Civil Procedure.

11. The United States District Court dismissed the Injunction case as Moot, when the *Brown* case was still pending.

12. The opinion written by the Court of Civil Appeals on June 7, 1963 was for the purpose of expressing the Court's personal venom against an Attorney, and not as the basis of its Judgment entered May 22, 1963.

13. The Court of Civil Appeals punished an Attorney and his clients for filing a suit in Federal Court against it and the Supreme Court of Texas, seeking to enjoin those Courts from interfering with Petitioners' prosecution of the *Brown* case, even though no order or alleged order of any Court prohibited such an injunction suit.

It has long been settled that State Courts may not enjoin proceedings in Federal Court once jurisdiction has attached. *U. S. Council of Keokuk, 73 U. S. 514, 6 Wall 514, 18 L. Ed. 933; Riggs v. Johnson County, 6 Wall 166, 18 L. Ed. 768; Weber v. Lee County, 6 Wall 210, 18 L. Ed. 781; United States v. Keokuk, supra; National Labor Relations Board v. Sunshine Mining Co., 125 Fed. 2d 757.*

In *Canterbury v. Mandeville, 63 S. Ct. 472, 318 U. S. 47, 87 L. Ed. 605* it is written: "But when the judgment sought is strictly in personam for the recovery of money or for an injunction compelling or restraining action by the defendant, both a state court and a federal court having concurrent jurisdiction may proceed with the litigation at least until judgment is obtained in one court *which may be set up as res adjudicata in the other.* These principles were recognized and the authorities sustaining them collected in Penn General Casualty Company v. Pennsylvania, 294 U.S. 189, 55 S. Ct. 386, 79 L. Ed. 850."

A Federal decision which closely parallels the State action here is that of *Supreme Tribe B-H v. Cauble, 235 U. S. 356, 65 L. Ed. 673, 41 S. Ct. 338,* where it was held that a federal district court, having rendered a decree in a class suit, brought in behalf of a certain class of beneficiaries in

a fraternal association, might enjoin members of the class, found to be bound by the decree, from prosecuting suits in the state courts which would relitigate questions settled by such decree. This decision was *reversed* by the Court in *Toucey v. N. Y. Life Insurance Co., 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100.*

Petitioners submit that the action of the Supreme Court of Texas in issuing the Writ of Mandamus was unconstitutional and void because it constituted a usurpation of the power vested in the United States Courts by the third Article of the Constitution; the mandamus was issued by the Supreme Court in direct contravention of the Texas statute authorizing the issuance of the writ *agreeable* to principles of law; the Court violated the principle that such a writ will not issue to compel performance of a discretionary act, and here the Court ordered reversal of a judgment entered after hearing upon a decision split two to one; it not only reversed, without appellate jurisdiction, a judgment, but instructed the trial court as to the judgment to be entered; further it usurped the jurisdiction of the Federal Court to determine the validity of a plea of res adjudicata pleaded in the action before it; it also made findings of fact contrary to the record and the finding of the trial court in violation of the rule that such findings will not be made in determining the right of a Petitioner to Mandamus. The action of the Supreme Court of Texas in excess of its jurisdiction and in violation of the jurisdiction of the United States District Court was null and void; it constituted a deprivation of the rights guaranteed to Petitioners by the

United States Constitution, in the provisions heretofore cited.

Since the action of the Supreme Court of Texas was void, all subsequent action taken by the Court of Civil Appeals pursuant to the Mandamus would likewise be void; the Court of Civil Appeals further deteriorated the situation by failing to obey its own rules in setting aside a judgment without notice, acting under invalid legal process, not properly served, and entertaining the City Attorney's Application for punishment for contempt without requiring proof of his authority; it further acted unconstitutionally by adjudging the parties in contempt without requiring proof of the order they were alleged to have violated or proper service thereof as required by law. The punishment imposed was excessive in view of the fact that the parties punished were acting in good faith, believing that the alleged orders issued were invalid and void; since husbands and wives of the same family were separately fined and the punishment appeared to be vindictive in view of the fact that no proof was offered showing that the Complainant has sustained any damage.

The Federal District Court action in dismissing the suits was contrary to law and the Constitution; that Court had the obligation under Federal law to protect its jurisdiction and to render judgment in the cases involved upon the basis of the facts and law presented to that Court in the normal course of legal proceeding. The action of that Court in substituting the State Courts' judgments for its own constituted a denial to Petitioners of their rights to

prosecute their claims in Federal Court without interference from the State. The dismissal of the Appeal to the United States Court of Appeals, 5th Circuit upon request made by Petitioners under threat of fine and imprisonment constituted an invasion of the jurisdiction of the Circuit Court of Appeals and this Court. The District Court not only denied Petitioners their right to the Federal Forum, but by refusing to protect its jurisdiction set Petitioners up for punishment by fine and imprisonment.

The record clearly shows that Petitioners have to this day not had a day in Court on the issues raised in the *Brown* case. The discriminatory nature of the judicial action complained of is demonstrated by the alleged Writ of Prohibition which prohibits *only* the people living in the Love Field area from trying to enforce their rights in Federal Court. Under that alleged Order any one else in the City of Dallas is free to file the same complaint as was filed in the *Brown* case in Federal Court and prosecute the same to a conclusion. Obviously this action is discriminatory, a denial of due process, equal protection of the laws and equal privileges and immunities. Some of the Petitioners fined had never been involved in the *Atkinson* case, and since the issues in that and the *Brown* case were distinct and different the spurious "class" doctrine and theory of res adjudicata applied by the State Courts was inapplicable to them.

Wherefore Petitioners pray that this Application for Writ of Certiorari be granted and that upon review, this Court declare null and void all actions of the Supreme

Court of Texas in issuing the Writ of Mandamus complained of; that this Court declare all actions of the Court of Civil Appeals in reversing its Judgment denying Writ of prohibition, issuing an alleged Writ of Prohibition, and punishing Petitioners for Contempt null, void and of no effect; and further that this Court reverse the Judgments of the United States District Court dismissing the *Brown* case and the Appeal taken therefrom and dismissing the *Donovan* action against the Supreme Court; and Petitioners further pray that this Court order the Court of Civil Appeals 5th Supreme Judicial District of Texas to refund all fines collected from Petitioners and to enter an Order clearing Petitioners of all contempt.

Petitioners further pray that this Court enter an Order enjoining the State Courts of Texas from further interference with Petitioners' rights to prosecute the *Brown* case in Federal Court or any other case over which the Federal Court has jurisdiction of the subject matter and the parties.

Petitioners suggest that if the relief prayed for be not granted, that any United States citizen may henceforth be denied the federal forum for protection of his rights under the United States Constitution and Federal law, by the simple device of a State Court enjoining such citizen from seeking relief in Federal Court.

Respectfully submitted,

JAMES P. DONOVAN,
30½ Highland Park Shopping
Village, Dallas 5, Texas,
Attorney for Petitioners.

INDEX TO APPENDIX

SUPREME COURT OF TEXAS, MANDAMUS

CALVERT, Chief Justice.

When irrelevant and immaterial matters are eliminated from this direct proceeding in this Court, only two ultimate questions remain for determination: 1. Has this Court jurisdiction to issue a writ of mandamus to a Court of Civil Appeals requiring it, in a proper case, to issue all writs necessary to prevent prosecution of a suit in which the plaintiffs, bound by a prior judgment of the Court of Civil Appeals, seek to relitigate issues which were determined by the prior judgment? 2. If so, does the record before us present a case in which our jurisdiction to issue the writ of mandamus should be exercised?

[1] The City of Dallas and its officials filed a proceeding in the Court of Civil Appeals for the Fifth Supreme Judicial District, sitting at Dallas, in which they sought the issuance of a writ of prohibition to prohibit the prosecution by the plaintiffs and their attorney of Civil Action No. 9276, styled Daniel C. Brown et al. v. City of Dallas, et al., pending on the docket of the United States District Court for the Northern District of Texas, Dallas Division, and to direct their dismissal of the case. The writ of prohibition was sought on the ground that the plaintiffs in Brown v. City of Dallas are attempting to relitigate issues determined by a final judgment of the Court of Civil Appeals for the Fifth District in Atkinson et al. v. City of Dallas et al., 353 S. W. 2d 275, writ refused, no reversible error. The Court of Civil Appeals denied the relief sought 362 S. W. 2d 372. The court's judg-

ment is not reviewable by appeal or writ of error. City of Houston v. City of Palestine, 114 Tex. 306, 267 S. W. 663.

The City of Dallas and its officials now seek a writ of mandamus from this Court directing the Court of Civil Appeals for the Fifth District, and the individual Justices of that court, to issue a writ of prohibition as there prayed for.

Before discussing the two questions posed at the beginning of this opinion, we dispose of two matters which we regard as irrelevant and immaterial.

[2] Respondents urge that relators are not entitled to relief from the Court of Civil Appeals because they seek relief only against the plaintiffs and their attorney in Brown v. City of Dallas and ask only for a writ of prohibition; that writs of prohibition issue to courts and not to litigants. Technically speaking, that is correct, City of Houston v. City of Palestine, 114 Tex. 306, 267 S. W. 663; Lowe and Archer, Injunctions and Other Extraordinary Remedies, p. 482, § 511; High, a Treatise on Extraordinary Legal Remedies, pp. 603-604, § 762; 42 Am. Jur. 139-140, 150-151, Prohibition, §§ 2, 3, 11, although the true function of the writ is often overlooked. See Humble Oil & Refining Co. v. Fisher, 152 Tex. 29, 253 S. W. 2d 656. However, incorrect identity of the writ sought is of no significance. Relators seek from the Court of Civil Appeals a writ directing the plaintiffs and their attorney to desist from further prosecution of Brown v. City of Dallas in the United States District Court. If they are entitled to that relief, necessary and proper writs, by whatever names they may be called, should be issued.

[3] Relators suggest in their brief that inasmuch as this Court refused writ of error, no reversible error, in Atkinson v. City of Dallas, the judgment of the Court of Civil Appeals in that case is a judgment of this Court which this Court may enforce by issuing writs to the plaintiffs and their attorney in Brown v. City of Dallas. The judgment of the Court of Civil Appeals in Atkinson v. City of Dallas is not a judgment of this Court. A judgment of a Court of Civil Appeals becomes a judgment of this Court when writ of error is granted for review of the judgment and it is affirmed. Houston Oil Co. of Texas v. Village Mills Co., 123 Tex. 253, 71 S. W. 2d 1087. But when writ of error for review of a Court of Civil Appeals' judgment is "Refused" or "Refused, No Reversible Error," this Court simply refuses to grant writ of error for the purpose of reviewing the judgment. City of Palestine v. City of Houston, Tex. Civ. App., 262 S. W. 215, 220, writ dismissed, 114 Tex. 306, 267 S. W. 663.

We now consider whether this Court has jurisdiction to issue a writ of mandamus to a Court of Civil Appeals requiring it, in a proper case, to issue all writs necessary to prevent prosecution of a suit in which the plaintiffs, bound by a prior judgment of the Court of Civil Appeals, seek to relitigate issues which were determined by the prior judgment.

[4] It is clear that the Supreme Court has jurisdiction to issue a writ of mandamus to a Court of Civil Appeals to compel it to perform a mandatory duty. Simpson v. McDonald, 142 Tex. 444, 179 S. W. 2d 239. Jurisdiction is con-

ferred by Article 1733[1] which authorizes the Supreme Court in original proceedings to issue "writs of * * * mandamus agreeable to the principles of law regulating such writs, against any district judge, or Court of Civil Appeals or judges thereof, * * *." Legislative authority for enactment of the statute is found in Sec. 3, Art. V of the Constitution, Vernon's Ann. St.

[5] Sec. 6, Art. V of the Constitution confers jurisdiction in particular matters on the Courts of Civil Appeals, and provides: "Said Courts shall have such other jurisdiction, original and appellate as may be prescribed by law." By the enactment of Art. 1823 the Legislature has provided: "Said courts [Courts of Civil Appeals] and the judges thereof may issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts." Interference with enforcement of a court's judgment is interference with its jurisdiction, and the quoted constitutional and statutory provisions confer jurisdiction on Courts of Civil Appeals to issue whatever writs are necessary, including the writ of injunction, to enforce their judgments. Long v. Martin, 116 Tex. 135, 287 S. W. 494; Cattlemens Trust Co. of Fort Worth v. Willis, Tex. Civ. App., 179 S. W. 1115; Nash v. Hanover Fire Ins. Co., Tex. Civ. App., 79 S. W. 2d 182. But recognition that such jurisdiction exists does not furnish a complete answer to our problem.

[6, 7] Conferral of jurisdiction on a court to do a given act invests it with power to do the act, Morrow v. Corbin,

[1] All Article references are to Vernon's Annotated Texas Civil Statutes.

122 Tex. 553, 62 S. W. 2d 641; but whether the act is to be done may be either discretionary or mandatory. When exercise of the power is discretionary, its exercise may not be compelled by a superior court. When exercise of the power is mandatory, it may and should be compelled. It follows that whether this Court may and should issue a writ of mandamus to a Court of Civil Appeals to compel it to enforce one of its judgments must turn on whether enforcement of the judgment is merely a discretionary right or is a mandatory duty of the court.

Generally speaking, enforcement of a judgment by the court which renders it, trial or appellate, is a duty. If a judgment is not enforced, the successful litigant has accomplished nothing; he has his victory but is denied its fruits. Judgments are rendered for the purpose of settling disputes between the parties to it; they are not to be nullified by either passive nonobservance or active interference. This does not mean, however, that it is the duty of an appellate court to exercise its original jurisdiction to enforce its judgments in every case. When an adequate remedy is otherwise available to a holder of rights under an appellate court judgment, the court which rendered it may, in its discretion, decline to exercise its original jurisdiction.

[8] One in whose favor an appellate court judgment has been rendered has an adequate remedy to bar a second suit which seeks only to relitigate the issues between the parties, or their privies, and which does not otherwise interfere with enforcement of the prior judgment or with the rights of the

parties springing from it. The remedy lies in the trial court in the defensive plea of res judicata; and the fact that the holder of rights under the prior judgment may be put to some trouble, delay and expense in defending the second suit does not render his remedy so inadequate as to require intervention by the appellate court through exercise of its original jurisdiction to enforce its judgment in the first suit. Milam County Oil Mill Co. v. Bass, 106 Tex. 260, 163 S. W. 577; Brazos River Conservation and Reclamation Dist. v. Belcher, 139 Tex. 368, 163 S. W. 2d 183; Iley v. Hughes, 158 Tex. 362, 311 S. W. 2d 648, 85 A. L. R. 2d 1. If the rule were otherwise, the defense of res judicata to suits in trial courts would soon be abandoned in all instances involving appellate court judgments in favor of original proceedings in our appellate courts. The Supreme Court and Courts of Civil Appeals are primarily courts of review, and there is nothing in the constitutional and statutory provisions, or in our decisions, requiring them to exercise original jurisdiction to enforce their judgments when the same relief may be obtained relatively as expeditiously and inexpensively in the trial courts.

[9] We should recognize, however, that a plea of res judicata as a defense to a second suit is not an adequate remedy for one holding rights under an appellate court judgment when an actual interference with enforcement of the judgment is coupled with the second suit, or when the mere filing and prosecution of the suit destroys the efficacy of the judgment. In such instances we conceive it to be the

duty, as well as the right, of the appellate court to exercise its original jurisdiction to enforce its judgment.

The Supreme Court and the various Courts of Civil Appeals have been prompt to discharge their duty to prohibit the prosecution of suits in which actual interference with enforcement of their judgments has been accomplished through ancillary writs issued by trial courts. Crouch v. McGaw, 134 Tex. 633, 138 S. W. 2d 94; Cattlemens Trust Co. of Fort Worth v. Willis, Tex. Civ. App., 179 S. W. 1115; Nash v. McCallum, Tex. Civ. App., 74 S. W. 2d 1046; Browning-Ferris Machinery Co. v. Thompson, Tex. Civ. App., 55 S. W. 2d 168; Life Ins. Co. of Virginia v. Sanders, Tex. Civ. App., 62 S. W. 2d 348. They have also been prompt to discharge their duty to prohibit the prosecution of suits which cloud title to real property when title has been settled by their prior judgments. Houston Oil Co. of Texas v. Village Mills Co., 123 Tex. 253, 71 S. W. 2d 1087; Rio Bravo Oil Co. v. Hebert, 130 Tex. 1, 106 S. W. 2d 242; Continental State Bank of Big Sandy v. Floyd, 131 Tex. 388, 114 S. W. 2d 530; Humble Oil & Refining Co. v. Fisher, 152 Tex. 29, 253 S. W. 2d 656; Yount-Lee Oil Co. v. Federal Crude Oil Co., Tex. Civ. App., 92 S. W. 2d 493. It is obvious that in the latter type of case the mere filing and prosecution of the suit destroys the efficacy of the prior judgment.

There are instances in which the Supreme Court and the Courts of Civil Appeals have exercised their original jurisdiction to enforce their judgments by prohibiting the prosecution of second suits involving the same parties and issues

when they were under no duty to do so. In most of such instances there was a taint of flagrant disregard of the appellate court judgment or an element of harassment and vexatious litigation. See Hovey v. Shepherd, 105 Tex. 237, 147 S. W. 224; Conley v. Anderson, Tex., 164 S. W. 985; Sparenberg v. Lattimore, 134 Tex. 671, 139 S. W. 2d 77; Nash v. Hanover Fire Ins. Co., Tex. Civ. App., 79 S. W. 2d 182; Haskell National Bank of Haskell v. Ferguson, Tex. Civ. App., 155 S. W. 2d 427; National Surety Corp. v. Jones, Tex. Civ. App., 158 S. W. 2d 112; Ferguson v. Ferguson, Tex. Civ. App., 189 S. W. 2d 442; City and County of Dallas v. Cramer, Tex. Civ. App., 207 S. W. 2d 918. In some reported instances there has been a declination to exercise jurisdiction to enforce prior judgments by prohibiting the prosecution of second suits when there was no duty to do so. Milam County Oil Mill Co. v. Bass, 106 Tex. 260, 163 S. W. 577; Brazos River Conservation and Reclamation Dist. v. Belcher, 139 Tex. 368, 163 S. W. 2d 183. Declination is not usually reflected in a reported opinion; it is evidenced by an order denying permission to file an application for extraordinary writs.

We have written at some length on the first question in an effort to harmonize prior decisions and to delineate for bench and bar the situations in this area in which the issuance of extraordinary writs by appellate courts to enforce their judgments is discretionary and those in which issuance of such writs is a duty. We recognize that what we have said and held is, to some extent, in conflict with statements in other opinions. In Milam County Oil Mill Co. v. Bass, 106 Tex. 260,

163 S. W. 577, 578, we said that this Court was *without jurisdiction* to issue extraordinary writs to enforce its judgment when the only purpose of the writs was to prevent the prosecution of a suit "which makes no attempt to obstruct its [the judgment's] execution, but denies its conclusiveness upon what is alleged to be another cause of action." In Houston Oil Co. v. Village Mills Co., 123 Tex. 253, 71 S. W. 2d 1087, 1089, although attempting to distinguish Bass, we said that this Court had jurisdiction to issue such writs as were necessary to enforce its judgment by prohibiting the prosecution of a second suit between the same parties or their privies, if the second suit "directly involves the relitigation of rights established by the judgment, and is of such a nature that, if successfully prosecuted, will result in a judgment which will purport the divesting of those rights." In neither case did we deal with the problem discussed here, that is, whether the exercise of jurisdiction, once conceded, is discretionary or mandatory.

[10] It is difficult to conceive of a case between the same parties and directly involving relitigation of rights established by a judgment, which, if successfully prosecuted, would *not* result in a judgment purporting the divesting of those rights. Even a take-nothing judgment in a personal injury damage suit would establish the right of the defendant not to pay; and a suit by the plaintiff to relitigate the issues, if successful, would result in a judgment divesting that right. We consider Village Mills and other cases, cited above, subsequent in point of time to Bass, to establish jurisdiction of this Court and the Courts of Civil Appeals to issue all writs

necessary to prevent prosecution of a suit in which the plaintiffs, bound by a prior judgment of the court, seek to relitigate issues which were determined by the prior judgment. And we hold, further, that exercise of such jurisdiction is mandatory when an actual interference with enforcement of the judgment is coupled with the second suit or when the mere prosecution of the suit destroys the efficacy of the judgment.

Under the rule here announced, if Brown v. City of Dallas, now pending in the United States District Court, is, as relators allege, an effort by parties bound by the judgment in Atkinson v. City of Dallas to relitigate the issues finally determined by the Court of Civil Appeals in that case, it is the duty of the Court of Civil Appeals to enjoin further prosecution of Brown v. City of Dallas. At issue is the validity of certain revenue bonds, known as Love Field Revenue Bonds, sought to be issued and sold by the City of Dallas, and the use of funds derived from the sale for improvement of airport runways at Love Field. If the judgment of the Court of Civil Appeals in Atkinson v. City of Dallas finally adjudicated the validity of the bonds and the right of the City of Dallas to expend funds derived therefrom for improvements at Love Field, the mere prosecution of any subsequent suit attacking the validity of the bonds and the right so to expend their proceeds destroys the efficacy of that judgment. Under the provisions of Section 3, Article 1269j-5, the authorizing statute, revenue bonds of this type cannot be finally issued until approved by the Attorney General, and the Attorney General does not approve issuance as long as

their validity is under attack in pending litigation. The mere filing and prosecution of the Brown suit is as effective to prevent enjoyment of the rights fixed by the prior Atkinson judgment as an injunction to prevent sale of the bonds would be.

The Court of Civil Appeals denied the relief sought by relators on the ground that it had no jurisdiction to grant it. Therefore, that court did not reach the question of whether the plaintiffs in Brown v. City of Dallas were bound by the Atkinson judgment and were seeking to relitigate issues foreclosed by that judgment. We are convinced by an examination of the pleadings in the two cases that they are.

Forty-three persons joined as plaintiffs in filing and prosecuting Atkinson v. City of Dallas. The suit was filed as a class action. The plaintiffs alleged that they were resident taxpayers of the City and County of Dallas and owners of homes and real property therein. They stated that included in the class which they represented were "the home owners, families and individuals who live, work, reside and attend schools, churches and other community centers in the area embraced within the approach areas of the planned runway," and that the persons constituting the class they represented numbered in the thousands making it impracticable to bring them before the Court. The plaintiffs sought a permanent injunction against issuance of the Love Field Revenue Bonds and against the building of an extended runway at Love Field.

The petition in Atkinson tendered many reasons why the injunction sought should issue. We will not review them in detail. Generally, it was alleged that all state statutes which purported to authorize issuance of the bonds were unconstitutional and void; that the bonds themselves were void because (1) not authorized by vote of the qualified voters, (2) they created a debt of the City of Dallas without compliance with constitutional requirements and in excess of that allowed by the charter of the City of Dallas, and (3) they constituted a lending of credit to individuals and corporations without the two-thirds vote of taxpayers required by Sec. 52, Art. III of the Constitution. Generally, it was alleged that the building of the runway violated Amendments V and XIV of the Constitution of the United States and Sec. 17, Art. I of the Constitution of Texas in that it would constitute a taking of their air-space without due process of law and denied them equal protection of the laws; that the proposed runway did not comply with Federal regulations as required by state statute; that the noise, smoke and danger from low-flying planes using the runway would disturb the quiet enjoyment of their properties and institutions, diminish the value of their properties and endanger their lives and health; that the establishment and use of the runway would create a public nuisance, and that the action of the City in constructing the runway was ultra vires and arbitrary.

[11] All of these issues and all subsidiary issues raised by the pleadings but not here mentioned, as well as all issues which by diligence could have been raised and tried, were determined and foreclosed against the plaintiffs by the judg-

ment of the Court of Civil Appeals affirming summary judgment against them in Atkinson v. City of Dallas. Freeman v. McAninch, 87 Tex. 132, 27 S. W. 97, 47 Am. St. Rep. 79; Ogletree v. Crates, Tex., 363 S. W. 2d 431. The fact that this Court refused writ of error, "No Reversible Error," in Atkinson does not indicate otherwise. It is the judgment of the Court of Civil Appeals, not its opinion, which brings the rule of res judicata into play. The notation, "Writ Refused. No Reversible Error," casts not the slightest cloud on a judgment of a Court of Civil Appeals. Rule 483, Texas Rules of Civil Procedure.

Respondents assert that the judgment in Atkinson is not res judicata of the issues in Brown because neither the parties nor the issues are the same.

[12] Brown v. City of Dallas was filed by one hundred twenty-two persons, thirty of whom were plaintiffs in the Atkinson case. Others than the City of Dallas were made defendants, i. e., City officials, the Attorney General of Texas, certain securities dealers and their attorneys, and certain owners of bonds already sold. The suit does not purport to be a class action, but the plaintiffs are all described as "taxpayers of the City of Dallas, Texas, and the owners of homes situated within the approach areas of existing and proposed runways at Love Field."

[13] It is immaterial that Brown is not a class action. The controlling fact is that Atkinson was a class action as authorized by Rule 42, Texas Rules of Civil Procedure; and being a class action of a hybrid type, the judgment in Atkin-

son binds all members of the class insofar as validity of the bonds and the right of the City to construct the runways are concerned if the class was adequately represented by those who sued on behalf of the class. McDonald, Texas Civil Practice, Vol. 1, § 3.37, pp. 283-284; Hovey v. Shepherd, 105 Tex. 237, 147 S. W. 224. The description of the plaintiffs in Brown, quoted above, shows clearly that they are members of the class represented by the plaintiffs in Atkinson, and it is not suggested that they were not adequately represented in that suit. Their right to relitigate the same issues is foreclosed by our decision in Hovey v. Shepherd, supra. This must be so. If it were not so, different groups of Dallas citizens could halt all efforts of the City to improve its airport facilities indefinitely by filing new suits. Such an absurdity cannot be tolerated.

An analysis of the petition in Brown discloses that the issues sought to be litigated are essentially the same as the issues litigated in Atkinson, and the prayer is for the same ultimate relief. Such additional collateral issues as are injected in Brown could, by diligence, have been litigated in Atkinson. They are, therefore, also foreclosed by the judgment in Atkinson.

[14] We conclude that it is the duty of the Court of Civil Appeals for the Fifth Supreme Judicial District to enforce its judgment in Atkinson v. City of Dallas by issuing whatever writs are necessary and effective to restrain the plaintiffs and their attorney in Brown v. City of Dallas from further prosecution of that suit. That action will no more invade or trench upon the jurisdiction of the United States

District Court than did the injunction issued in University of Texas v. Morris, 162 Tex. 60, 344 S. W. 2d 426. See also: Moton v. Hull, 77 Tex. 80, 13 S. W. 849, 8 L. R. A. 722; 28 Am. Jur. 737, Injunctions, § 229. The Court of Civil Appeals may not, however, order or direct dismissal of Brown v. City of Dallas. A suit cannot be dismissed from the docket of a court without an order of the court; and any writ directing dismissal of Brown v. City of Dallas would invade the jurisdiction of the United States District Court to control its own docket.

There is indication in the history of this matter that it has reached the point of vexatious and harassing litigation. If the Court of Civil Appeals concludes that other suits to relitigate the same issues may be filed by other members of the class bound by the judgment in Atkinson, that court may, upon proper allegations and prayer, enjoin the filing of such suits by other members of the class.

We are satisfied that the Court of Civil Appeals will honor this opinion and will grant all necessary and proper writs for the enforcement of its judgment in Atkinson v. City of Dallas. Writ of mandamus will issue only if it should fail or refuse to do so.

COURT OF CIVIL APPEALS, PROHIBITION

DIXON, Chief Justice.

City of Dallas, together with certain of its officials and and other interested parties, Petitioners, seeks a writ of prohibition and ancillary orders against James P. Donovan and about 200 of his clients, Respondents, to prohibit Respondents from further prosecuting Civil Action No. 9276, styled Brown, et al. v. City of Dallas et al., now pending in the United States District Court for the Northern District of Texas, Dallas Division.

Petitioners allege that the issues which Respondents present in their suit in the United States District Court are the same issues involving the same subject matter that have been previously adjudicated by this Court in the case of Atkinson et al. v. City of Dallas, Tex. Civ. App., 353 S. W. 2d 275; and that the writ of prohibition is necessary to protect the previous judgment of this Court and its enforcement and execution.

The record discloses events leading up to or connected with Petitioners' application as follows:

1. On April 3, 1961 George S. Atkinson and others, owners of property near Love Field, a municipal airport located in the City of Dallas filed a class suit in the District Court of the State of Texas to restrain the City of Dallas from the construction of a runway at the airport. The suit also attacked the validity of certain revenue bonds which the City was about to issue to finance construction of the runway.

2. On July 17, 1961 a summary judgment was rendered in favor of the City denying the permanent injunction sought by the Plaintiffs.

3. On December 15, 1961 this Court on the appeal of the case, affirmed the above summary judgment. Motion for rehearing was overruled on January 19, 1962. A detailed statement of the points urged on the appeal will be found in 353 S. W. 2d 275.

4. On March 14, 1962 the Supreme Court of Texas denied a writ of error in the case with the notation "no reversible error", and announced that a motion for rehearing would not be entertained.

5. On June 25, 1962 the Supreme Court of the United States denied a writ of certiorari in the case, Atkinson v. City of Dallas, 370 U. S. 939, 82 S. Ct. 1587, 8 L. Ed. 2d 808, and on October 8, 1962, 83 S. Ct. 18 overruled a motion for rehearing. Thus the judgment of this Court of December 15, 1961 affirming the summary judgment of the trial court became final for all purposes, and the issues decided in our judgment of affirmance became res judicata.

6. On September 24, 1962 Respondents herein filed Civil Action No. 9276, styled Brown et al. v. City of Dallas et al., in the United States District Court. By this suit they seek a permanent injunction against the City, to restrain the City from building the runway and from issuing certain revenue bonds. They do not seek a temporary injunction, and none has been granted. Thirty of the plaintiffs in the United

States District Court are the same persons who were plaintiff in the original suit filed April 3, 1961 in a District Court of Dallas County. Other plaintiffs, all alleged to be property owners, were added in the United States District Court.

7. On October 2, 1962 the City of Dallas filed the application for writ of prohibition which is now before us for decision. The City asserts that the suit in the United States District Court is merely an attempt to relitigate the issues which were adjudicated in our judgment of affirmance of December 15, 1961.

8. On October 6, 1962 Respondents filed an application in the United States District Court seeking to enjoin this Court from further considering or acting on the City's application for a writ of prohibition.

9. On October 10, 1962, the United States District Court dismissed Respondents' application for injunction to restrain this Court from further considering the City's application for a writ of prohibition.

Are the issues raised in the Civil Action No. 9276, styled Brown et al. v. City of Dallas et al. filed September 24, 1962 in the United States District Court the same as the issues adjudicated in our judgment of affirmance of December 15, 1961, which judgment became final when the Supreme Court of the United States on October 8, 1962 overruled a motion for rehearing? Petitioners contend that the issues are the same. Respondents contend that they are not the same.

After a careful consideration of the whole record a majority of our Court have concluded that it is not necessary for us to answer the above question in order to decide whether to grant or refuse the writ of prohibition sought by Petitioners. For it is our opinion that regardless of whether the issues are the same, there are other considerations which should and do cause us to decide that the writ ought to be refused.

[1, 2] Under Art. 1823, Vernon's Ann. Civ. St. we are given authority to issue writs of mandamus and other writs only when necessary to protect our jurisdiction. State Farm Mutual Automobile Ins. Co. v. Worley, Tex. Civ. App., 346 S. W. 2d 407, 409. The pendency of Action No. 9276 in the United States District Court does not invade our exclusive jurisdiction, though the issues in the suit may be the same as the issues decided in our judgment of affirmance. Ours is not the only Court which has jurisdiction to enforce a plea of res judicata in support of our judgment of affirmance of December 15, 1961. That defense may be and has been pled by the City in Action 9276 in the United States District Court, and that Court has jurisdiction to hear and give effect to the plea.

Petitioners contend in effect our jurisdiction is invaded because Respondents have filed a suit in another Court in which Respondents try to ignore the finality of our judgment. And Petitioners further contend that the only way our jurisdiction can be protected and respected is by the issuance of a writ of prohibition restraining the litigants from

further prosecuting their suit in the other Court where it is now pending. We do not agree to such contention. To agree would be equivalent to hold that the conclusiveness of a judgment could never be determined except by the Court that rendered it.

In a situation similar in most respects to the situation now before us our Supreme Court took note of the difference between an invasion of a court's jurisdiction and the mere filing of a suit in disregard of a prior judgment. We quote from the opinion by Justice Nelson Phillips in Milam County Oil Mill Co. v. Bass, 106 Tex. 260, 163 S. W. 577:

> "* * * to disregard a judgment through the institution of a suit is not necessarily to obstruct its operation. True it may draw the judgment into question through the denial of its effect, and the judgment may be so conclusive as to render the suit a groundless one; but the jurisdiction of the court is not invaded by the mere assertion of rights through such method, even in contravention of the judgment, so long as its operation is left unimpeded. If a court should entertain such a suit, and through want of jurisdiction or failure to accord to the judgment its legal effect render an erroneous decree, *the remedy provided by our system for its revision and the readjudication, if needs be, of the conclusiveness of the judgment, is an appeal.* (emphasis ours)
>
> "We are not insensible to the hardship that such cases may sometimes impose, nor to the forcible argument of the able counsel for relators that litigation in relation to this estate, so prolonged as its history discloses, should end; but such considerations afford in themselves no ground for the closing of the doors of the courts to suits, however ill founded, brought in evident good faith. * * *

"The power of a court to enforce its jurisdiction does not include an authority to prevent the prosecution of any suit to which a judgment of the court may be an effectual bar, but which, beyond presenting an issue as to the conclusiveness of the judgment upon the asserted cause of action, makes no attempt to disturb it, or to interfere with its execution or the exercise of rights established by it, as such a suit does not conflict with the exercise of that power which constitutes jurisdiction in the court, the power to hear and determine the cause and enforce the judgment rendered, and therefore does not violate its jurisdiction. The assumption of such right would invest a court not merely with the control of its own judgments and authority to enforce its jurisdiction, but with a further power to govern other courts in the exercise of their lawful jurisdiction; *and the result would be that the issue of the conclusiveness of a judgment upon what is urged as a distinct cause of action could never be determined except by the court that rendered it.*" (emphasis ours)

The Supreme Court went on to say that the cases of Hovey v. Shepherd, 105 Tex. 237, 147 S. W. 224, and Conley v. Anderson, 106 Tex. 265, 164 S. W. 985 are not in opposition to the above expressed view. In both of them the suits which were prohibited, directly attempted to obstruct the execution of the judgments of the Supreme Court. In our opinion the same thing may be said of Cattlemen's Trust Co. of Ft. Worth v. Willis, Tex. Civ. App., 179 S. W. 1115.

In the instant case the United States District Court has done nothing to repudiate our judgment of affirmance; and we shall not assume that it will do any such thing. To the contrary we must assume that the United States District Court will give full effect to our judgment by sustaining a

plea of res judicata if the issues before it should prove to be the same issues which we previously adjudicated. State Farm Mutual Automobile Ins. Co. v. Worley, Tex. Civ. App., 346 S. W. 2d 407, 409.

In the above case it was further held that a writ of prohibition will not be granted where there is an adequate remedy at law, such as an appeal. This holding was in keeping with the holding of our Supreme Court in Milam County Oil Mill Co. v. Bass, supra, wherein it was held, that "if a court should entertain such a suit, and * * * render an erroneous decree, the remedy * * * is an appeal." See also Clark v. Ewing, Tex. Civ. App., 196 S. W. 2d 53, 55.

[3] Petitioners in the instant case allege that to pursue this cause in the United States District Court would involve hardships due to delay incident to a probable appeal by Respendents to the Circuit Court of Appeals and thereafter an attempt to obtain a writ of certiorari from the Supreme Court of the United States. While such proceedings are pending, delivery of the revenue bonds will be held up, for bond buyers will not purchase bonds while legal proceedings involving the bonds are pending. This may be true, but as stated in the Milam County case, consideration of hardships do not afford grounds for the closing of the doors to suits, however ill founded, brought in good faith.

It is with regret that the majority of our court feel impelled under the circumstances to decline to order the writ of prohibition to issue. But our duty as we see it is to refuse Petitioners' application.

Petitioners' application for a writ of prohibition is refused.

YOUNG, J., dissents.

YOUNG, Justice (dissenting).

In my opinion, the writ of prohibition, pursuant to Art. 1823, V.A.C.S., should issue on the City's plea of res judicata —the validity of Love Field Revenue Bonds having already been established in the Atkinson suit by final judgment of this Court and confirmed both by the Supreme Court of Texas and the United States Supreme Court. "The doctrine of 'res adjudicata', or estoppel by reason of a former judgment, rests upon the principle that a cause of action which has been once determined upon its merits by a competent tribunal, between parties over whom that tribunal had jurisdiction, cannot afterwards be litigated by them in another proceeding, either in the same or different tribunal, * * *." 24 Words and Phrases, Perm. Ed., "Res Adjudicata", p. 146.

Of these Revenue Bonds, Series No. 395 in amount of Eight Million Dollars were involved in the Atkinson case which could not be sold and delivered by reason of the litigation. On final adjudication of the Atkinson case as recited in the majority opinion, the City then continued a financing of the construction of the Love Field Runway by issuance of the same General Revenue Bonds, Series No. 401, but in the lesser amount of Five Million Dollars, to be sold September 24, 1962, on which date the Respondents filed another Civil Action in Federal Court, No. 9276, styled Daniel C. Brown et al. v. City of Dallas et al., again seeking permanent

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injunction against the sale of these bonds. No temporary injunction was sought and none was necessary, for, due to the unique nature of bonds and bond issues the mere filing of suit in Federal Court would have that effect.

Courts of Civil Appeals may protect its jurisdiction by writ of prohibition or injunction against maintenance by defendants to the judgment of a suit in another tribunal *attacking the validity of the original judgment or seeking to enjoin its execution.* See Long v. Martin, 116 Tex. 135, 287 S. W. 494. Does Respondents' suit in the Federal Court have this emphasized effect? It undoubtedly does.

Our Supreme Court of course, recognizes the doctrine of res adjudicata and has permitted this prohibitory writ to issue in all instances where the operation of the prior judgment or its execution has been directly interfered with, but not so (as in City and County of Dallas v. Cramer, Judge, Tex. Civ. App., 207 S. W. 2d 918) where "Relator would be left undisturbed, except by the annoyance of the suit, in the full enjoyment of the rights secured by the judgment of this court." Obviously the case of Milam County Oil Mill Co. v. Bass, 106 Tex. 260, 163 S. W. 577, was of the latter class; the Supreme Court stating that the cause of action there asserted "makes no attempt to disturb it (the prior judgment) or to interfere with its execution or the exercise of rights established by it."

Judge Phillips further states in Milam County Oil Mill Co. v. Bass, supra, that: "The power to enforce its judgments necessarily inheres in a court as an essential attribute of its

jurisdiction, but there is a manifest difference between the enforcement of a judgment and the prevention of a suit *which makes no attempt to obstruct its execution*, but denies its conclusiveness upon what is alleged to be another cause of action. * * * The jurisdiction of the court is not invaded by the *mere assertion of rights through such method, even in contravention of the judgment, so long as its operation is left unimpeded.* * * *". (emphasis mine) And in Houston Oil Mill Co. of Texas et al. v. Village Mills Co. et al., 123 Tex. 253, 71 S. W. 2d 1087 the Supreme Court, referring to Milam County Oil Mill Co. v. Bass, supra, stated: "In that case it is by no means clear that the judgment sought in the Hill County suit, the second suit, would directly interfere with the operation of the prior judgment of this court."

The majority does not and cannot say that this second suit of Brown et al. v. City of Dallas et al., is not a renewal of the litigation foreclosed in the Atkinson case, the mere filing of which constitutes such a cloud upon the title to these general Revenue Bond issues as to preclude their sale. In the situation thus presented, the majority merely begs the question by their negative ruling on the application for writ of prohibition; concluding as they do that a plea of res adjudicata can as well be sustained by the Federal District Court, and such indeed may be the ruling of Judge Sarah T. Hughes. Even so, the door will be opened for full scale relitigation of the validity of these bonds in anotner trial court, on through the United States Circuit Court of Appeals and again to the Supreme Court of the United States. On the

other hand a grant of the relief prayed for by the City of Dallas will finally terminate this prolonged litigation, save for a possible appeal to the Supreme Court of Texas.

The legal maxim of "justice delayed is justice denied" is truly relevant to the adjudicated rights of Petitioner City of Dallas.

COURT OF CIVIL APPEALS, CONTEMPT

OPINION OF COURT OF CIVIL APPEALS

No. 16,193

CITY OF DALLAS, *et al.*,

Petitioners,

v.

DANIEL C. BROWN, *et al.*,

and

JAMES P. DONOVAN, Atty.,

Respondents.

* * * * *

Original contempt proceedings. The City of Dallas, acting through its City Attorney, by motion duly verified, moves this Court to declare respondents to be in contempt of this Court for violation of a Writ of Probition and Ancillary Orders issued by this Court on April 16, 1963. For a proper understanding of the issues here presented it is both desirable and essential to relate the following relevant antecedent facts.

1. On April 3rd, 1961 George S. Atkinson, and others, owners of property near Love Field, a municipal airport located in the City of Dallas, filed a class suit in the District Court of Dallas County seeking to restrain the City of Dallas from the construction of a runway at said airport. Said suit being No. 59027-H, styled GEORGE S. ATKINSON, ET AL V. CITY OF DALLAS, also attacked the validity of certain revenue bonds which the City of Dallas was about to issue to finance construction of the airport runway.

2. On July 17, 1961 the District Court granted a summary judgment in favor of the City denying permanent injunction sought by plaintiffs.

3. On December 15, 1961 this Court, on the appeal of the above case, affirmed the judgment of the trial court. Motion for rehearing was overruled on January 19, 1962. A detailed statement of the facts and issues involved will be found in this Court's opinion, being numbered 16,038, styled GEORGE S. ATKINSON, ET AL, V. CITY OF DALLAS, and reported in 353 SW 2d 275.

4. Appellants made application to the Supreme Court of Texas for a writ of error and, on March 14, 1962, the application was denied by the Supreme Court with the notation "No Reversible Error".

5. On June 25, 1962 the Supreme Court of the United States denied a writ of certiorari in the case, and on October 8, 1962 overruled a motion for rehearing. See GEORGE S. ATKINSON V. CITY OF DALLAS, 8 L. Ed. 2d 808, rehearing denied 9 L. Ed. 2d 92. By the action of the Supreme Court of the United States the judgment of this Court of December 15, 1961 became final.

On September 24, 1962 Respondents herein filed Civil Action No. 9276, styled BROWN, ET AL V. CITY OF DALLAS, ET AL in the United States District Court for the Northern District of Texas, Dallas Division. By this suit they sought a permanent injunction against the City of Dallas to restrain said City from building the runway and from issuing certain revenue bonds. No temporary in-

junction was sought and none was granted. Forty of the plaintiffs in the case of Brown et al v. City of Dallas, et al in the United States District Court were the same persons who were plaintiffs in the original suit filed April 3, 1961 in the District Court of Dallas County, Texas and other plaintiffs, all alleged to be property owners, were added in the Federal Court case.

7. On October 2, 1962, the City of Dallas and others filed an application for Writ of Prohibition and other Ancillary Mandatory Orders in this Court asking us to enforce our judgment in ATKINSON V. CITY OF DALLAS by prohibiting the plaintiffs in the case of BROWN V. CITY OF DALLAS, ET AL in the United States District Court from attempting to relitigate the same issues and from interfering with the issuance and sale of the Love Field Revenue Bonds which this Court had declared to be valid in the ATKINSON decision. This Court was also requested to direct that the plaintiffs in the BROWN suit be required to dismiss said cause and refrain from filing any other litigation in reference to said runway and Love Field Revenue Bonds.

8. On October 6, 1962, the plaintiffs in the BROWN suit filed an application in the United States District Court seeking to enjoin this Court from considering or acting upon the City's application for writ of prohibition.

9. On October 10, 1962, at the hearing, the United States Court dismissed the application for injunction to restrain this Court from further considering the City's application for a writ of prohibition.

10. On October 24, 1962, by a divided court, with Chief Justice Dixon and Associate Justice Williams filing a majority opinion, we denied the City of Dallas the relief sought in its application for writ of prohibition. Associate Justice Young filed a written dissenting opinion. The motion for rehearing filed by the City of Dallas was overruled on November 23, 1962. City of Dallas, et al. v. Brown, et al. 362 SW 2d 372.

11. On December 8th, 1962, the City of Dallas, as petitioner, filed its original application for a mandamus in the Supreme Court of the State of Texas, in which it was asked that the Supreme Court order and direct this Court of Civil Appeals to grant the relief prayed for and which relief this Court had denied in Cause No. 16,193, styled CITY OF DALLAS, ET AL. V. DANIEL C. BROWN, ET AL.

12. The Supreme Court of the State of Texas, in cause No. A-9340, styled CITY OF DALLAS, et al, Relators, v. HONORABLE DICK DIXON, Chief Justice, et al, Respondents, did, by written opinion dated March 15, 1963, issue its order, styled "An Original Mandamus" directing this Court to issue a writ of prohibition and other ancillary orders granting to the City of Dallas the relief sought against further prosecution of the case involving the same issues as had been previously foreclosed in the ATKINSON case. CITY OF DALLAS, ET AL V. HONORABLE DICK DIXON, Chief Justice, et al, 365 SW 2d 919. The Supreme Court overruled motion for rehearing and notice was given to this Court to comply with the order of the Supreme Court.

13. Thereafter no action was taken by respondents to cause such decision of the Supreme Court of Texas to be reviewed by the Supreme Court of the United States.

14. The Supreme Court of Texas, in its opinion, held that the parties in the case of BROWN V. CITY OF DALLAS in the Federal Court were bound by the decision in ATKINSON V. CITY OF DALLAS. In the regard the court said:

> "It is immaterial that Brown is not a class action. The controlling fact is that Atkinson was a class action as authorized by Rule 42, Texas Rules of Civil Procedure; and being a class action of the hybrid type, the judgment in Atkinson binds all members of the class insofar as validity of the bonds and the right of the City to construct runways are concerned if the class was adequately represented by those who sued on behalf of the class. McDonald, Texas Civil Practice, Vol. 1, Sec. 3.37, pp. 283-284; Hovey v. Shepherd, 105 Tex. 237, 147 SW 224. The description of the plaintiffs in Brown, quoted above, shows clearly that they are members of the class represented by the plaintiffs in Atkinson, and it is not suggested that they were not adequately represented in that suit. Their right to relitigate the same issues is foreclosed by our decision in Hovey v. Shepherd, supra. This must be so. If it were not so, different groups of Dallas citizens could halt all efforts of the City to improve its airport facilities indefinitely by filing new suits. Such an absurdity cannot be tolerated."

The Supreme Court, by its opinion, also held that the issues sought to be litigated in the Federal Court are essentially the same as the issues litigated in ATKINSON to final judgment. Thus the court said:

> "An analysis of the petition in Brown discloses that the issues sought to be litigated are essentially the same

as the issues litigated in Atkinson, and the prayer is for the same ultimate relief. Such additional collateral issues as are injected in Brown could, by diligence, have been litigated in Atkinson. They are, therefore, also foreclosed by the judgment in Atkinson."

16. Pursuant to direct order of the Supreme Court of Texas, this court did, on April 16, 1963, grant its Writ of Prohibition and Ancillary Orders, directed to the Respondents providing that said parties and all of them:

"together with all persons similarly situated are hereby prohibited from prosecuting, urging or in any manner seeking to litigate, as attorney and/or plaintiffs, case No. 9276 styled BROWN ET AL, V. CITY OF DALLAS, ET AL, now pending in the United States District Court for the Northern District of Texas, Dallas Division, and they and each of them, individually, and as a class, are further prohibited and enjoined from filing or instituting any litigation, lawsuits and other actions, seeking to contest the right of the City of Dallas to proceed with the construction of the parallel runway as presently proposed at Love Field situated within the City of Dallas, Texas, or from instituting and prosecuting any further litigation, lawsuits or actions in any court, the purpose of which is to contest the validity of the airport revenue bonds heretofore issued under authority of Art. 1269-J, V.A.C.S. or that might be issued under said Article for the construction of the Love Field runway and the ancillary improvement in connection therewith, or from, in any manner interfering with or casting any cloud upon, or slandering the title of, or interfering with the delivery of, the proposed bonds by the City of Dallas, any of its agents or representatives or others seeking to assist them in the sale and delivery of the same."

17. The City of Dallas filed a motion to dismiss the Brown suit in the Federal Court and at a preliminary hear-

ing in the Federal Court James P. Donovan, as attorney for the plaintiffs therein, filed a motion to dismiss certain persons as plaintiffs, but to add new party-plaintiffs. The Federal Judge granted the motion to dismiss certain plaintiffs from the suit but before permitting the new parties to intervene in that suit required assurance that the parties seeking to intervene had been warned that to actively prosecute said suit might be a contempt of this court and the orders theretofore issued by it. Attorney James P. Donovan stated to the Federal Judge that the matter had been brought to the attention of the new parties and they had been fully warned of the possible consequences of their action.

18. In spite of the Writ of Prohibition issued by this Court, attorney James P. Donovan, representing the parties in the Brown case in the Federal Court, filed an answer to the City's motion to dismiss the Brown case and actively and vigorously opposed the motion to dismiss. The basis of the attorney's opposition to such motion was that his clients had not had their day in court and that the order of this court and the order of the Supreme Court of Texas were invalid. On May 2, 1963 the Judge of the United States District Court ordered the Brown case dismissed and Respondent Donovan noted exception to such action.

19. Following the issuance of the Writ of Prohibition by this Court, attorney James P. Donovan, on behalf of himself and a number of the Respondents herein, filed Cause No. CA-3-63-120 Civil in United States District Court styled James P. Donovan, et al v. The Supreme Court of Texas, et al, in which suit it was prayed that the Federal Court grant

an injunction against the Court of Civil Appeals and the Supreme Court of Texas restraining the enforcement of the writs theretofore issued by this court. On May 9, 1963 the Judge of the United States District Court granted motion to dismiss this cause, to which action an exception was duly noted by Donovan.

20. The present motion for contempt filed by the City of Dallas in this Court alleges that respondents, and each of them, have been guilty of contempt of this Court by violating the Writ of Prohibition and injunction heretofore issued by us in the following respects:

(a) In failing to request the Federal Court to dismiss the case of Daniel C. Brown, et al, v. City of Dallas, et al, No. 9276 pending in the United States District Court.

(b) By filing motion contesting the dismissal of said Brown suit in the Federal Court;

(c) That the respondents who made themselves new parties in the Federal Court case, following the issuance of our Writ of Prohibition and injunction, were guilty of contempt in knowingly aiding and abetting the further prosecution of said suit in the Federal Court;

(d) In appearing and vigorously and actively opposing and contesting the motion to dismiss the Brown suit in the Federal Court;

(e) By taking exceptions to the order of the Federal Court in dismissing the Brown suit;

(f) By filing cause No. CA-3-63-120 Civil styled James P. Donovan, et al, v. Supreme Court of Texas, et al, in the United States District Court which said suit seeks to interfere with the enforcement of the Writ of Prohibition issued by this Court.

The hearing on the motion for contempt came on to be heard by this Court on May 13, 1963. Motion for continu-

ance filed by James P. Donovan, for himself and respondents, was sustained and the matter reset for May 20, 1963. On said date, May 20, 1963 the matter came on for hearing and James P. Donovan and all of the respondents who had been served with notice to appear, did appear, and announced ready for the hearing on the motion for contempt. Respondents' motion to quash the affidavit for contempt was overruled and the Court proceeded to hear testimony from both petitioners and respondents. The evidence of petitioners consisted of documentary proof relating to the matter heretofore recited and testimony of an Assistant City Attorney. The only witness who testified for respondents was attorney James P. Donovan who candidly stated that the actions and conduct on the part of all the respondents were taken upon his advice that the orders of the Supreme Court of Texas and of this Court were invalid.

The testimony presented upon this hearing abundantly demonstrates that all of the respondents are guilty of contempt of this Court. Respondents have been shown to have knowingly violated the orders of this Court which were issued in pursuance to a mandate of the Supreme Court of Texas. Such wilfull disobedience of a valid order of a court constitutes contempt which cannot be tolerated. Respondents' contention that they have not been afforded their day in court is entirely without merit. As demonstrated by the foregoing facts, respondents have had their full day in court. The issues have been presented to twenty-three judges comprising every court from the trial court to the United States Supreme Court and these judges have, without a single dissent, decided the issues against respondents. Over a period of two

years respondents have had the benefit of every judicial hearing available in both State and Federal Courts. The issues having been adjudicated against them, they must necessarily recognize the end of litigation. There must be an end to litigation else there would be no purpose of beginning litigation.

If orders of this or any other court are to be ignored and disobeyed merely because some attorney says that they are invalid then our system of jurisprudence will fall and anarchy and chaos will result. We will have fallen upon evil days, indeed, when an attorney arrogates unto himself the function to declare invalid mandates of a court of law. Our Government of law, and not of men, does not tolerate such usurpation of power by any person and especially by an officer of the court sworn to protect and defend the constitution and laws of the nation and of this State.

During the hearing of this matter the respondent, attorney James P. Donovan, made many irresponsible statements concerning our courts which clearly demonstrates his attitude. For example he assailed the judgment of the Supreme Court of Texas contending that "it isn't worth, in our opinion, the paper it was written on." At another point he said, in effect, that he and his clients were not in contempt of this Court; that they were probably in contempt of the Supreme Court of Texas but they were not being tried for that. (Footnote 1). He admitted that, in response to an inquiry from the United States District Judge, that he had advised his clients that they were subjecting themselves to a contempt action by proceeding in the Federal Court case. The whole

record illustrates one fact clearly, that is, that the respondents, with full knowledge of the facts, followed attorney Donovan's advice and counsel to the effect that orders of the court were invalid and should be disobeyed or ignored.

Art. 1826, V.A.C.S. specifically empowers this Court to punish any person for a contempt of this Court, not to exceed $1,000 fine or imprisonment not to exceed twenty days. As to the individual respondents we have considered the mitigating facts and circumstances, and especially that they were advised by attorney Donovan to perform the acts complained of, and have therefore set their punishment at $200 fine. However, as to the respondent Donovan, it is our judgment that he should be assessed the maximum jail sentence of twenty days in the County Jail.

Subsequent to the entry of our original judgment several of the respondents appeared and presented additional mitigating or extenuating circumstances and as a result thereof we have amended our order; as shown by the record herein, completely exonerating twenty-six of the respondents and altering and modifying the sentence of others.

All respondents, with exceptions heretofore noted, are found guilty of contempt and assessed punishment as shown by the judgment of this Court.

PER CURIAM

June 7, 1963

Footnote 1:
It is of interest to note other irresponsible and unlawyerlike statements made by Respondent Donovan which illustrate his general attitude towards courts. For example, he charged the Assistant City Attorney with "tampering with the Court" (referring to the Federal Court), and that he did not "believe in backdoor jurisprudence" (still referring to the United States District Court).

THE STATE OF TEXAS

I, JUSTIN G. BURT, Clerk of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas hereby certify that the foregoing seven (7) pages contain a true and correct copy of the Opinion of this Court delivered and filed in my office on June 7th, 1963 in Cause No. 16,193, City of Dallas, et al, Petitioner vs. Daniel C. Brown, et al, Respondents, as the original thereof appears on file in my office.

GIVEN under my hand and seal of said Court at office in Dallas, this the 28th day of June, 1963.

JUSTIN G. BURT
Clerk.

(SEAL)

U. S. DISTRICT COURT, INJUNCTION

May 9, 1963: The Court: "Now with reference to this case, if you will recall, both you and Mr. Bickley, though the City was not in the case, were here when you presented to me your application for a Restraining Order. At that time, I understood, as you have stated today, that you disagreed with the Supreme Court, that you felt that they had gone beyond any previous decision and beyond the authority of the Supreme Court.

At that time I said to you that I thought your remedy was a Writ of Certiorari to the Supreme Court of the United States and that I would set this case far enough off so that you could make some attempt to get it before the Supreme Court of the United States. This was filed on April 23 and I set it on this date in order to give you some time.

Now I stated to you then and I state again, that I do not consider that the Federal District Court is the Appellate Court for the Supreme Court of Texas. I think your remedy is before the Supreme Court of the United States.

In the second place the Brown case was dismissed last Thursday and there is nothing here.

Your application is to restrain the Supreme Court of Texas and the Court of Civil Appeals from interfering with you in prosecuting a case which has now been dismissed, so that I consider it moot. However I am going to give you all your hearings and this Application for the Temporary injunction is denied.

May 16, 1963—For the reasons previously stated and without repeating, the Motion to Dismiss is sustained."

U. S. DISTRICT COURT, BROWN

OPINION—BROWN

May 2, 1963—As you both know, I have read the pleadings in this case. I have likewise read the Opinions of both the Supreme Court and the Court of Civil Appeals, and incidentally, I think very highly of the Chief Justice of the State of Texas, who wrote the opinion in the Supreme Court case, and I know that he does a great deal of research and his Opinions are written very carefully.

The parties are the same, since the Atkinson case was brought as a class action and so includes all of the parties in that neighborhood.

The issues that are sought to be litigated in the case in the Federal Court have been held by the Supreme Court to be the same as the issues which have been litigated in the Atkinson case.

The prayer for relief is similar.

In my opinion there is no justiciable issue to be presented in the Federal Court case. All the issues have been decided in the Atkinson case.

I consider that you are attempting to make me an Appellate Court for the Supreme Court, and that your appeal is to the Supreme Court of the United States and not to this Court.

You and the litigants in this case have been prohibited from proceeding in this case and therefore I dismiss the case as asked by the City Attorney's office.

SUPREME COURT OF TEXAS, MANDAMUS

IN THE SUPREME COURT OF TEXAS

No. A-9340 March 13, 1963.

CITY OF DALLAS *et al.*,

v.

HONORABLE DICK DIXON, CHIEF JUSTICE, *et al.*

Original Mandamus.

This cause came on to be heard on petition for writ of mandamus, filed herein on December 6, 1962, and the said petition together with the record and briefs and argument of counsel having been duly considered, because it is the opinion of the Court that the petition should be granted, and a writ of mandamus conditionally issued, it is therefore *adjudged*, *ordered* and *decreed* that unless the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas enforces its judgment in the case of George S. Atkinson et al. vs. City of Dallas, No. 16038 on the docket of said Court, by issuing whatever writs are necessary and effective, in accordance with the opinion of this Court herein this day delivered, the Clerk of this Court will issue a peremptory writ of mandamus commanding, compelling and requiring said Court of Civil Appeals so to do.

It is further ordered that respondents, Paul A. Crick, Dr. Hobson Crook, George H. Harmon, James H. Parr, Martin E. Collis, Jr., J. W. Slaughter, James E. Strum, Floyd R. Raupe, George S. Atkinson, Vernon C. Pampell, Paul H. Crawford, E. T. Busch, V. C. Bilbo, W. H. Richardson, Aus-

tin Crow, J. O. Garrett, E. W. Quinton, Dr. Grant Boland, L. E. Dease, H. P. McDonald, M. J. Pellillo, J. D. Lowrie, S. R. Kirby, Charles Williamson, Jean Shaw, W. Claude Jones, James W. Odom, Reveau & Virginia Bassett, Walter Sodeman, Mr. & Mrs. O. L. Whitman, Mr. & Mrs. J. Walter Long, Jr., Mrs. Charles J. Butler, C. H. Asel, Lee R. Slaughter, Frank Grimes, Winston C. Jones, C. O. Crudgington, Daniel C. Brown, J. W. Tomlin, William Darrell Graves, George B. Lotridge, Lloyd S. Carter and Arthur E. Tappan, and their attorney of record, James P. Donovan, jointly and severally, pay all costs in this proceeding in this Court, for which execution may issue.

(Opinion of the Court by Robert W. Calvert, Chief Justice)

* * * * *

SUPREME COURT OF TEXAS, REHEARING

IN THE SUPREME COURT OF TEXAS

April 10, 1963.

No. A-9340.

CITY OF DALLAS *et al.*,

vs.

HONORABLE DICK DIXON, CHIEF JUSTICE, *et al.*

Original Mandamus.

Motion of respondents, except the Justices of the Court of Civil Appeals, for rehearing, filed in the above numbered and entitled cause on March 28, 1963, having been duly considered by the Court, it is ordered that said motion be, and hereby is, overruled.

* * * * * *

COURT OF CIVIL APPEALS, CONTEMPT

U. S. District Court, Brown

THE STATE OF TEXAS

TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS—GREETINGS:

WHEREAS, on the 20th day of May, 1963, in the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Dallas County, Texas, in a matter entitled City of Dallas, a Muncipal Corporation, et al, Petitioners, v. Daniel C. Brown, et al, Respondents, No. 16,193, the City of Dallas made complaint supported by affidavits and a motion for contempt requesting the Court to cite James P. Donovan to show cause as to why he should not be held in contempt of this Court and punished therefor for the conduct alleged in said motion; and,

WHEREAS, upon the filing of said motion, the said James P. Donovan was given due and full notice to appear before said Court and show cause why he should not be held in contempt of said Court; and,

WHEREAS, the said James P. Donovan did appear before said Court and filed his answer contesting the grounds for such contempt; and,

WHEREAS, upon hearing of the complaint, the answer and all of the evidence offered and the full proof as to the acts of contempt therein charged, the Court on May 22, 1963 entered final judgment adjudging James P. Donovan in contempt of such Court and fixing as his punishment confinement in the County Jail of Dallas County, Texas, for a

period of twenty (20) consecutive days, beginning on this the 22nd day of May, 1963, a copy of which Judgment is attached hereto as Exhibit "A" and made a part hereof.

Now, Therefore,

You are commanded to take the body of the said James P. Donovan and safely keep him in custody in the County Jail of Dallas County, Texas, without bail, until he shall purge himself of the contempt by being confined in the County Jail of Dallas County, Texas, for said period of twenty (20) consecutive days, as set out in said Judgment and Order of the Court.

WITNESS THE Honorable Dick Dixon, Chief Justice of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Texas, this the 22nd day of May, 1963.

(Signed) DICK DIXON

DICK DIXON, Chief Justice of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas, Texas.

(Signed) JUSTIN G. BURT

Clerk of the Court of Civil Appeals for the Fifth Supreme Judicial District Court of Texas at Dallas, Texas.

(SEAL)

ISSUED THIS THE 22nd day of May, 1963.

(Signed) JUSTIN G. BURT

Clerk of the Court of Civil Appeals for the Fifth Supreme Judicial District Court of Texas at Dallas, Texas.

NO. 16193

CITY OF DALLAS,

v.

DANIEL C. BROWN, *et al.*

IN THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS AT DALLAS

JUDGMENT OF CONTEMPT

This the 20th day of May, 1963, came on to be heard the above entitled and numbered matter, which had previously been set for the 13th day of May, 1963, but on motion and supplemental motion for continuance made by James P. Donovan as attorney for the Respondents, the same was continued by order of the Court until this date, and in which cause George Atkinson, Harvey Bell, U. J. Boland, Daniel C. Brown, Mary Brown, Martin E. Collis, Jr., Norma June Collis, Paul H. Crawford, Nora Crawford, Paul A. Crick, Anne K. Crick, Dr. Hobson Crook, Russell Moore Crook, Austin Crow, Alberta R. Crow, L. A. Danek, Fred M. Gore, Frank Grimes, Lena Mae Grimes, Geneva Hood, Wayne Hood, William C. Isom, W. C. Jones, P. D. King, Nancy King, R. C. Logan, Marion Logan, Janet McCluer, H. P. McDonald, James W. Odom, Helen Odom, J. H. Parr, Joan S. Parr, M. J. Pellillo, Zelma Pellillo, R. L. Pitt, Pauline Pitt, Jessie Powell, Dee Powell, W. H. Richardson, Marion Lee Siegel, J. W. Slaughter, Jr., Christine C. Slaughter, Walter Sodeman, James E. Strum, Linnis Strum, J. W. Tomlin, Charline Tomlin, M. E. Worrell, Jr., Lucille Worrell, Harvey Waldman, Evelyn Waldman, Audrey M. Karr,

William G. Byars, Mrs. L. A. Danek, Mrs. Arlene E. Davis, Donald S. Reckrey, Caroline Rogers, Russell G. Rogers, Dorothy Boland, Dr. Grant Boland, Jack H. Broom, Jane Broom, C. D. Crudgington, James P. Donovan, Mary R. Gore, J. H. Huddleston, Juanita Isom, Arvil Jarman, Mary Jarman, George B. Lotridge, Browning Lotridge, J. D. Lowrie, Jr., Lillian Lowrie, Lometta McDonald, Dorothy Lusk Myrick, S. A. Myrick, Lewis A. Park, Lola E. Park, Anna Marie Pylant, Calvin Pylant, Geneva Quinton, E. W. Quinton, Faye Richardson, Arthur G. Rudkin, Helen Rudkin, Patricia P. Dukelow, Emily F. Slaughter, Lee R. Slaughter and Alberta M. Turrill were, pursuant to due complaint, (which is found to be legal and to state good grounds therefor) ordered to show cause why they should not be punished as for contempt for their conduct in such complaint and order specified, to-wit:

George Atkinson,
Harvey Bell,
U. J. Boland,
Daniel C. Brown,
Mary Brown,
Martin E. Collis, Jr.,
Norma June Collis,
Nora Crawford,
Paul H. Crawford,
Anne K. Crick,
Paul A. Crick,
Dr. Hobson Crook,
Russell Moore Crook,
Alberta R. Crow,
Austin Crow,
L. A. Danek,
Frank Grimes,
Lena Mae Grimes,
Fred M. Gore,
Geneva Hood,
Wayne Hood,
William C. Isom,
W. C. Jones,
Nancy King,
P. D. King,
Marion Logan,
R. C. Logan,
H. P. McDonald,
Janet McCluer,
Helen Odom,
James W. Odom,
J. H. Parr,
Joan S. Parr,
M. J. Pellillo,

Zelma Pellillo,
Pauline Pitt,
R. L. Pitt,
Jessie Powell,
Dee Powell,
W. H. Richardson,
Marion Lee Siegel,
Christine C. Slaughter,
J. W. Slaughter, Jr.,
Walter Sodeman,
James E. Strum,
Linnis Strum,
Charline Tomlin,
J. W. Tomlin,
Lucille Worrell,
M. E. Worrell, Jr.,

in that they:

(a) Failed to request the United States District Court to dismiss Cause No. 9276, styled Daniel C. Brown et al v. City of Dallas et al;

(b) Contested the dismissal of the cause of Daniel C. Brown, et al v. City of Dallas et al, No. 9276, pending in the United States District Court;

(c) Took exception preparatory to appeal of the order of the United States District Court dismissing Cause No. 9276 styled Daniel C. Brown et al v. City of Dallas et al; and

(d) Filed Cause No. CA-3-63-120 Civil, in the United States District Court styled James P. Donovan et al v. The Supreme Court of Texas, et al;

and Audrey M. Karr in that she:

(a) Joined as a party Plaintiff in Cause No. 9276 in the United States District Court styled Daniel C. Brown et al v. City of Dallas et al;

(b) Contested the dismissal of the cause of Daniel C. Brown et al v. City of Dallas et al, No. 9276, pending in the United States District Court;

(c) Took exception preparatory to appeal of the order of the United States District Court dismissing Cause No. 9276 styled Daniel C. Brown et al v. City of Dallas et al; and

(d) Filed Cause No. CA-3-63-120 Civil, in the United States District Court styled James P. Donovan et al v. The Supreme Court of Texas, et al;

and

William G. Byars,
Mrs. L. A. Danek,
Mrs. Arlene E. Davis,
Donald S. Reckrey,
Caroline Rogers,
Russell G. Rogers,

in that they:

(a) Joined as parties Plaintiff in Cause No. 9276 in the United States District Court, styled Daniel C. Brown et al v. City of Dallas et al;

(b) Contested the dismissal of the cause of Daniel C. Brown et al v. City of Dallas et al, No. 9276, pending in the United States District Court;

(c) Took exception preparatory to appeal of the order of the United States District Court dismissing Cause No. 9276, styled Daniel C. Brown et al v. City of Dallas, et al;

and

Dorothy Boland
Dr. Grant Boland
Jack H. Broom
Jane Broom
C. D. Crudgington
James P. Donovan
Mary R. Gore
Juanita Isom
Arvil Jarman
Mary Jarman
Browning Lotridge
George B. Lotridge
J. D. Lowrie, Jr.
Lillian Lowrie
Lometta McDonald
Dorothy Lusk Myrick
S. A. Myrick
Lewis A. Park
Lola E. Park
Anna Marie Pylant
Calvin Pylant
Geneva Quinton
E. W. Quinton
Faye Richardson
Arthur G. Rudkin
Helen Rudkin

in that they did file Cause No. CA-3-63-120 Civil, in the United States District Court styled James P. Donovan et al v. The Supreme Court of Texas et al, and

Patricia P. Dukelow
Emily F. Slaughter
Lee R. Slaughter
Alberta M. Turrill

in

(a) Failing to request the United States District Court to dismiss Cause No. 9276 styled Daniel C. Brown et al v. City of Dallas et al;

(b) Contesting the dismissal of the cause of Daniel C. Brown et al v. City of Dallas et al, No. 9276, pending in the United States District Court;

(c) Taking exception preparatory to appeal of the order of the United States District Court dismissing Cause No. 9276 styled Daniel C. Brown et al v. City of Dallas et al; and

it appearing to the Court that each of the said Respondents has been duly cited to appear and answer herein and that they and each of them has filed answer, and the said James P. Donovan after filing an appearance filed a Motion to Quash, which was overruled, and the Court having heard the same, as well as the complaint, due proof of such contempt, and the evidence offered by James P. Donovan, who was the only Respondent who testified and who in his testimony testified that he had advised his clients, the other Respondents herein, in writing that the Order of this Court issued on the 16th day of April, 1963, was invalid and that

they were not required to obey it and that each of the Respondents who did not request to be dropped from the pending cases in the Federal Court authorized him in writing to proceed with the prosecution of the same, and who further stated to the Court as attorney for the Respondents that he had advised them not to testify before this Court on this hearing, and each of the Respondents when offered opportunity by the Court to testify in person refused to do so, and the Court having further heard the argument of counsel of both parties is of the opinion that the said Respondents are each and every one guilty of contempt of this Court by reason of the acts alleged and proved, as hereinabove specifically set forth.

It appearing that the Respondents B. D. Siegel, G. C. Karr, Harriet G. Crudington, Arthur B. MacKinstry III, June C. MacKinstry and Winton R. Dukelow were not served with notice of the Order to Show Cause and did not appear in Court in person or by attorney, no judgment is rendered against them, but the cause against each of them shall remain pending service of notice and hearing.

It further appearing to the Court that the Respondents J. H. Huddleston, Harvey Waldman, Evelyn Waldman, Amy Rose Garrett, J. O. Garrett, Besa Fairtrace Short and Paul Short have absolved themselves of any contempt of this Court and will obey the orders of the Court, no punishment is adjudged against them, except they shall pay the proportionate part of the costs due by each of them, for which execution shall issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that

George Atkinson,
Harvey Bell,
Dorothy Boland,
Dr. Grant Boland,
U. J. Boland,
Jane Broom,
Daniel C. Brown,
Jack H. Broom,
Mary Brown,
William G. Byars,
Martin E. Collis, Jr.,
Norma June Collis,
Nora Crawford,
Paul H. Crawford,
Anne K. Crick,
Paul A. Crick,
Dr. Hobson Crook,
Russell Moore Crook,
Alberta R. Crow,
Austin Crow,
C. D. Crudgington,
L. A. Danek,
Mrs. L. A. Danek,
Mrs. Arlene E. Davis,
Patricia P. Dukelow,
Fred M. Gore,
Mary R. Gore,
Frank Grimes,
Lena Mae Grimes,
Geneva Hood,
Wayne Hood,
Juanita Isom,
William C. Isom,
Arvil Jarman,
Mary Jarman,
W. C. Jones,
Audrey M. Karr,
Nancy King,
P. D. King,
Marion Logan,
R. C. Logan,
Browning Lotridge,
George B. Lotridge,
J. D. Lowrie, Jr.,
Lillian Lowrie,
Janet McCluer,
H. P. McDonald,
Lometta McDonald,
Dorothy Lusk Myrick,
S. A. Myrick,
Helen Odom,
James W. Odom,
Lewis A. Park,
Lola E. Park,
J. H. Parr,
Joan S. Parr,
M. J. Pellillo,
Zelma Pellillo,
Pauline Pitt,
R. L. Pitt,
Dee Powell,
Jessie Powell,
Anna Marie Pylant,
Calvin Pylant,
Geneva Quinton,
E. W. Quinton,
Donald S. Reckrey,
Faye Richardson,
W. H. Richardson,
Caroline Rogers,
Russell G. Rogers,
Arthur G. Rudkin,
Helen Rudkin,
Marion Lee Siegel,

Christine C. Slaughter,
Emily F. Slaughter,
J. W. Slaughter, Jr.,
Lee R. Slaughter,
Walter Sodeman,
James E. Strum,
Linnis Strum,
Charline Tomlin,
J. W. Tomlin,
Alberta M. Turrill,
Lucille Worrell,
M. E. Worrell, Jr.,

Respondents, be and they are hereby adjudged to be in contempt of this Court, and the punishment of each is a fine in the amount of Two Hundred ($200.00) Dollars to be paid by each and every one of them on or before the twenty-seventh (27) day of May, 1963 at five (5) o'clock in the afternoon, to the Clerk of this Court.

IT IS THE FURTHER ORDER, JUDGMENT AND DECREE of this Court that upon failure of the said Respondents to pay the fines hereinabove assessed within the time hereinabove specified, each of said Respondents so failing shall be imprisoned in the County Jail of Dallas County, Texas, without bail, until such time as said Respondents shall have purged himself or herself of said contempt by payment of the fine as herein assessed against him or her, or until the further orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent James P. Donovan be, and he is hereby, adjudged to be in contempt of this Court and that his punishment be confinement in the County Jail of Dallas County, Texas, without bail, for a period of twenty (20) consecutive days beginning on this date, and that he be remanded forthwith to the custody of the Sheriff of Dallas County, Texas, for the purpose of such confinement.

The costs of this cause are hereby taxed against all of the above Respondents pro rata, for which let execution issue.

THE STATE OF TEXAS

I, Justin G. Burt, Clerk of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, hereby certify that the above and foregoing is a true and correct copy of COMMITMENT WITH COPY OF JUDGMENT OF CONTEMPT attached, now on file in my office, in cause No. 16,193, City of Dallas, et al, Petitioners, vs. Daniel C. Brown, et al, Respondents.

GIVEN UNDER MY HAND AND SEAL OF SAID Court, at office in Dallas, this the 28th day of June, 1963.

JUSTIN G. BURT.
Clerk.

IT IS FURTHER ORDERED by the Court that the Clerk of this Court shall issue the necessary commitments and executions to carry into effect the terms and provisions of this judgment.

Signed, rendered and entered upon the minutes of this Court, at Dallas, Texas, this 22nd day of May, 1963.

DICK DIXON
Dick Dixon, Chief Justice.

CLAUDE WILLIAMS
Claude Williams,
Associate Justice.

HAROLD A. BATEMAN
Harold A. Bateman,
Associate Justice.

U. S. DISTRICT COURT, BROWN

No. 9276 Civil

In the
UNITED STATES DISTRICT COURT
For the Northern District of Texas
Dallas Division

DANIEL C. BROWN, *et al.*,

Plaintiffs,

v.

CITY OF DALLAS, *et al.*,

Defendants.

ORDER DISMISSING SUIT

This, the second day of May, 1963, came on to be considered the Motion of the City of Dallas, et al, Defendants in the above entitled and numbered cause, to dismiss this cause and all parties having appeared by attorneys and the Court, having considered the pleadings, the evidence submitted to the Court and argument of counsel, is of the opinion that said cause is without merit and should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT the Plaintiffs take nothing and that this cause be dismissed in all things and that costs be adjudged against the Plaintiffs, for which let execution issue.

Entered on this 9th day of May, A.D., 1963.

SARAH T. HUGHES,
Judge presiding

Approved as to form
James P. Donovan
Attorney for Plaintiffs

U. S. DISTRICT COURT, BROWN APPEAL

No. 9276

In the

UNITED STATES DISTRICT COURT

For the Northern District of Texas

DANIEL C. BROWN, *et al.*,

v.

CITY OF DALLAS, *et al.*,

ORDER DISMISSING APPEAL

THIS THE 14 day of June, 1963, came on to be considered by the Court the Petition of James P. Donovan, attorney for the Appellants in the above entitled and numbered cause, to dismiss said appeal, and it appearing to the Court that all but three of the Appellants have previously heretofore withdrawn from this cause on their own written request, the Court is of the opinion that the appeal should be dismissed.

IT IS, THEREFORE, THE ORDER, JUDGMENT AND DECREE of this Court that the Petition of James P. Donovan on behalf of the Appellants to dismiss the appeal is hereby granted and said cause and the appeal of the same is hereby dismissed, and that all costs of suit shall be taxed against the Appellants herein, for all of which let execution issue.

ENTERED this 14 day of June, 1963.

SARAH T. HUGHES

Judge of the United States
District Court, Northern
District of Texas

U. S. DISTRICT COURT, INJUNCTION

No. CA-3-63-120

In the

UNITED STATES DISTRICT COURT

Northern District of Texas

Dallas Division

JAMES P. DONOVAN, *et al.*,

Plaintiffs,

v.

SUPREME COURT OF TEXAS, *et al.*,

Defendants.

ORDER OF COURT

This the 16th day of May, 1963, came on to be heard the above entitled and numbered cause on the motion of the Defendants to dismiss, and all parties having appeared by counsel, the Court having considered the motion to dismiss and the argument of counsel, and having considered the motion of the Plaintiffs to exclude matters alleged by them to be extraneous, being the exhibits attached to Defendants' Answer and Motion to Dismiss, is of the opinion that the Plaintiffs' motion should be overruled and that the Defendants' Motion to Dismiss should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiffs' motion to exclude the exhibits attached to Defendants' pleadings as being extraneous is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion to Dismiss be and it is in all things hereby granted, and said cause is dismissed.

All costs herein are adjudged against the Plaintiffs, for all of which let execution issue.

ENTERED this the 21 day of June, 1963.

SARAH T. HUGHES,
Judge Presiding

APPROVED AS TO FORM:
JAMES P. DONOVAN
Attorney for Plaintiffs

ALLEGED WRIT OF PROHIBITION

No. 16,193

CITY OF DALLAS, *et al.*, *Petitioners*, v. DANIEL C. BROWN, *et al.*, *Respondents.*	WRIT OF PROHIBITION AND ANCILLARY ORDERS

On this the 16th day of April, 1963, came on to be considered the matter of the issuance of a writ of prohibition and ancillary orders in compliance with the judgment and orders of the Supreme Court of Texas handed down March 13, 1963, in Cause No. A-9340, City of Dallas et al v. Honorable Dick Dixon, Chief Justice, et al, in which cause a motion for rehearing was overruled by the Supreme Court of Texas on April 10, 1963.

In this cause, the City of Dallas, together with certain of its officials and other interested parties, as Petitioners, seeks a writ of prohibition and ancillary orders against Daniel C. Brown, Mary Brown, R. L. Pitt, Pauline Pitt, Harvey Bell, Austin Crow, Alberta R. Crow, Frank Grimes, Lena Mae Grimes, Winton R. Dukelow, Patricia P. Dukelow, W. H. Richardson, Faye Richardson, B. D. Siegel, Marion Lee Siegel, Charles Williamson, Jerry Williamson, Paul A. Crick, Anne K. Crick, E. W. Quinton, Geneva Quinton, W. C. Jones, U. J. Boland, Dorothy Boland, Arthur G. Rudkin, Helen Rudkin, James E. Strum, Linnis Strum, Paul M. Crawford, Nora Crawford, Martin E. Collis, Jr., Norma June Collis, Arthur E. Tappan, Bettie Tappan, E. Gardner Clapp, Stella Clapp, George Atkinson, Jack H. Broom, Jane

Broom, George B. Lotridge, Browning Lotridge, J. W. Tomlin, Charline Tomlin, H. P. McDonald, Lometta McDonald, J. D. Lowrie, Jr., Lillian Lowrie, Anna Marie Pylant, Calvin Pylant, Lewis A. Park, Lola E. Park, S. A. Myrick, Dorothy Lusk Myrick, Robert L. Brackett, William C. Isom, Juanita Isom, E. T. Cramer, Walter Sodeman, Lee R. Slaughter, Emily F. Slaughter, J. H. Parr, Joan S. Parr, J. W. Slaughter, Jr., Christine C. Slaughter, R. F. Slaughter, James W. Odom, Helen Odom, S. R. Birby, M. J. Pellillo, Zelma Pellillo, Jean Shaw, C. D. Crudgington, Harriett G. Crudgington, Dr. Hobson Crook, Russell Moore Crook, J. O. Garrett, Amy Rose Garrett, Paul Short, Besa Fairtrace Short, R. C. Logan, Marion Logan, Dee Powell, Jessie Powell, Arthur B. MacKinstry, III, June C. MacKinstry, James H. Murray, E. T. Busch, Louise Busch, P. D. King, Nancy King, M. E. Worrell, Jr., Lucille Worrell, Dr. Grant Boland, J. F. McClain, Charlene McClain, Fred M. Gore, Mary R. Gore, L. A. Danek, Lawrence R. Schmidt, Wayne Hood, Geneva Hood, J. M. Berry, Ethel Berry, C. J. Bitter, Patricia Bitter, Janet McCluer, Forrest McKee, Dorothy McKee, James O. Boyd, Robie Boyd, Alberta M. Turrill, Arvil Jarman, Mary Jarman, William S. Holden, Virginia Holden, Harvey Waldman, Evelyn Waldeman, J. W. McCulley, J. H. Huddleston, Richard Zacha, individually and as taxpayers and landowners in the City of Dallas and as representatives of a class of taxpayers and residents and landowners in the vicinity of Love Field; and James P. Donovan, individually and as the attorney for the other parties, all as Respondents, which said cause was heard by this Court and the decision therein was handed down on the 24th day of October 1962.

And this Court being of the opinion that in order to comply with the orders and instructions of the Supreme Court of Texas, it is necessary to set aside and hold for naught our judgment heretofore entered in this cause on the 24th day of October 1962, in which cause motion for rehearing was overruled on November 23, 1962;

It is therefore ORDERED, ADJUDGED and DECREED that the judgment heretofore rendered in this cause by this Court on October 24, 1962, is set aside and held for naught, and said cause of action is restored to the docket of pending causes to await further orders of court.

It is further ORDERED, ADJUDGED and DECREED that the said James P. Donovan, individually and as attorney, and any other agents, attorneys or representatives, of the Respondents herein, and the Respondents each and every one, individually and as a class of taxpayers and residents and landowners in the vicinity of Love Field, together with all other persons similarly situated, are hereby prohibited from prosecuting, urging or in any manner seeking to litigate, as attorney and/or plaintiffs, Civil Case No. 9276 styled Brown et al v. City of Dallas et al, now pending in the United States District Court for the Northern District of Texas, Dallas Division, and they and each of them, individually and as a class are further prohibited and enjoined from filing or instituting any litigation, lawsuits or other actions seeking to contest the right of the City of Dallas to proceed with the construction of the parallel runway as presently proposed at Love Field situated within the City of Dallas, Texas, or from instituting and prosecuting any further liti-

gation, lawsuits or actions in any court, the purpose of which is to contest the validity of the airport revenue bonds heretofore issued under authority of Article 1269j, V.A.C.S., or that might be issued under said Article for the construction of the Love Field runway and the ancillary improvements in connection therewith, or from in any manner interfering with, or casting any cloud upon, or slandering the title of, or interfering with the delivery of, the proposed bonds by the City of Dallas, any of its agents or representatives or others seeking to assist them in the sale and delivery of the same.

All of the Respondents herein, individually and as a class, and others in the same class, are further prohibited and enjoined from in any manner interfering with the enforcement and execution of the judgment in the case of *Atkinson et al v. City of Dallas*, reported at 353 S. W. 2d 275.

By issuance of this Writ, this Court does hereby give notice to all of the parties herein, their agents, attorneys and representatives, individually and as a class, and to any and all other persons of the same class or attempting to represent these individuals or others in the same class, that it will take such action as may be necessary to prohibit and enjoin the filing of any other vexatious or harassing litigation seeking to relitigate any of the issues raised, or that could have been raised, in this cause or in the case of *Atkinson et al v. City of Dallas, supra*, or from in any manner interfering with this writ of prohibition and the full enforcement of the fruits of the judgment of the *Atkinson et al v. City of Dallas* case, under pain of contempt of this Court.

IT IS FURTHER ORDERED that the Respondents herein and as herein named and their attorney of record, James P. Donovan, jointly and severally, pay all costs in this proceeding, together with all costs in the original action herein styled City of Dallas, et al. v. Brown, et al., for all of which execution may issue.

THEREFORE, We command you to observe the Order of our said Court of Civil Appeals in this behalf and in all things to have it duly recognized, obeyed and executed and notice is hereby given to you by and through your attorney, James P. Donovan, on whom a copy of this Order has been served in person, and a copy of the same shall be mailed to each Respondent by the Clerk of this Court.

WITNESS the Honorable Dick Dixon, Chief Justice of our said Court of Civil Appeals with the Seal hereunto set at the City of Dallas, Texas, this the 16th day of April, A.D. 1963.

DICK DIXON

Honorable Dick Dixon, Chief Justice,
Court of Civil Appeals for the Fifth
Supreme Judicial District of Texas.
at Dallas